**SENATE**

*Wednesday, July 06, 2005*

The Senate met at 1.30 p.m.

**PRAYERS**

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

**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. Prof. Ramesh Deosaran from today's sitting of the Senate.

**SUMMARY COURTS (AMDT.) (NO. 2) BILL**

*Order for second reading read.*

**The Attorney General (Sen. The Hon. John Jeremie):** Mr. Vice-President, I beg to move,

That a Bill to amend the Summary Courts Act, Chap 4:20, be now read a second time.

In moving the second reading of this Bill, I seek leave of the Senate to discuss along with the Bill, the Criminal Procedure (Amdt.) Bill because the two Bills are interrelated.

*Question put and agreed to.*

**Sen. The Hon. J. Jeremie:** Mr. Vice-President, crime permeates everything that we do in this Senate. Nowhere was this more apparent than yesterday, when in our discussion on the Headquarters Agreement Sen. Mark raised the question as to whether or not the members of the Association of Caribbean States (ACS) would be safe in this country. That was indeed an unfortunate question, but it is perhaps a reflection of the time in which we live. The Bills before us today and those on which I would speak in the week to come represent a part of the Government's resolve to treat with some of the difficulties which are inherent in the system of the administration of justice. Those difficulties have a direct bearing on what happens on the ground in relation to criminal activity. If the system as it relates to the administration of justice is broken or deficient, a number of criminals can use the system to their advantage to commit offences sequentially, as they are on bail.

The first Bill I speak on is the Summary Courts (Amdt.) (No. 2) Bill. The Hon. Chief Justice at the opening of the term in his maiden address in

2002/2003, identified several difficulties which needed attention, namely the backlog of cases in the judicial system and the taking of notes in court by longhand. The Chief Justice noted that these problems were particularly acute in the Magistrates' Court. On October 15, 2002, he established, as a consequence, a committee under the chairmanship of Justice Mark Mohammed, Senior Counsel, the mandate of which was essentially to address the issue of delay in the criminal justice system on a whole. The committee was empowered to consider measures which could be adopted to shorten criminal trials in the High Court and Magistrates' Court and to consider the setting up of a remand court. It was comprised of a broad cross-section of persons with an interest in the administration of the criminal justice system.

The committee was comprised of members of the Magistracy; the Law Association; the Criminal Bar; the Southern Assembly of Lawyers; the Tobago Law Association; the Director of Public Prosecutions; the Court and Process Division of the Police Service; the Prison Service; the Forensic Science Centre and members of the administrative section of the court. That committee reported on February 27, 2003 and made a number of recommendations. Those recommendations went to the Cabinet of the day and the end product was the Summary Courts Act and the amendments which I speak to in relation to the Criminal Procedure (Amdt.) Bill.

One of the committee's recommendations involved an amendment to the Summary Courts Act, Chap. 4:20, to include provisions which are similar to sections 9 and 10 of the Criminal Justice Act, 1967 of the United Kingdom. The committee also recommended a similar provision in respect of section 10 of the Criminal Justice Act, 1967 of the United Kingdom be included in the Criminal Procedure Act, Chap. 12:02, as well as provisions to enable judges to provide written directions to juries after consulting with the attorneys at law for the prosecution and defence on matters which are of substantial complexity. That power does not exist at this time.

The Bills before us seek to give effect to these recommendations. In relation to the Summary Courts (Amdt.) (No. 2) Bill, its main purpose is twofold. Firstly, it is to amend the Summary Courts Act and provide for the admissibility of written statements. That is, statements in writing by witnesses concerning matters which are not in dispute. That is one area of reform.

The second area of reform is to amend the Act to allow formal admissions as proof of a fact which is not in dispute in the course of a summary trial.

In the first instance, the amendment will allow the written statement of a witness which contains matters which are not controverted to be admitted into evidence upon the agreement of the defence and prosecution. We hope, and the committee's aspiration in this respect was that that in itself will shorten the length of summary trials. The new practice will reduce the time spent by the note-taker because these notes are taken verbatim in the recording of evidence-in-chief and the recording of evidence when witnesses are being cross-examined. The end product would be that judicial time would be saved and matters should be completed more expeditiously.

Members of the Senate would wish to note that we are not alone in making these changes to our Summary Courts Act. Two other Caricom countries, the Bahamas and Jamaica, have since introduced similar provisions in their respective Evidence Acts. The committee also recommended that the Summary Courts Act be amended to incorporate section 10 of the Criminal Justice Act, 1967 of the United Kingdom which would allow for formal admissions to be made and received. The inclusion of such a provision would relieve the prosecution of the burden of having to prove matters which are not in dispute and do not normally go to the heart of the offence.

Clause 2 of the Bill seeks to address the issue of formal admission of facts which are not in dispute.

The proposed new clause 63C was drafted along the lines of section 10 of the Criminal Justice Act, 1967, of the United Kingdom. Similar provisions also exist in the Bahamas, Belize and Barbados in their respective Evidence Acts. It should be noted that this Bill will not be applicable to preliminary enquiries. It only deals with the summary trials and provides for written statements and formal admission to be tendered into evidence in the course of only those proceedings. Preliminary enquiries are excluded for the time being.

The Government will shortly be looking at amending the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, to deal specifically with written statements and formal admissions being tendered into evidence at a preliminary enquiry at a later date.

Under the existing law, section 63(5) of the Summary Courts Act makes it necessary for the magistrate in every case to take or cause to be taken by a competent clerk, notes in writing of evidence or so much of it, as he considers material. That is done manually in a book which is kept for that purpose. The

magistrate at the conclusion of each day's proceedings is required to sign that book. It must be noted that although section 3 of the Recording of Court Proceedings Act, 1991, which is Act No. 1, 1991, states that where a written law provides that proceedings in a court shall be recorded, those proceedings will be recorded by any means, that Act goes on to provide that the Registrar of the Court or the Clerk of the Peace, may, as soon as practicable, cause a transcript of the record of proceedings to be prepared. Certificates of those responsible for the accuracy of the recording must then verify the transcript. The Act has carried us nowhere.

The Judiciary has already informally implemented the audio-digital recording system in the Magistrates' Courts at a considerable cost to the Government of Trinidad and Tobago. That system is now in place in most of the Magistrates' Courts in order to facilitate the recording of court proceedings by a means other than the archaic system which now obtains. This measure, the audio digital recording of evidence, will contribute to the reduction of delay, cost and complexity in cases before the Magistrates' Courts. At present, the Summary Courts Act deals with the recording of evidence only in the form of written depositions. The Recording of Court Proceedings Act, 1991, addresses the issue of verification of the recording of court proceedings.

Section 3 of this Act provides that the record of the relevant court proceedings may be recorded by any means. That will include electronic audio recording, video recording or Computer Aided Transcription. In these circumstances at a later date we propose certain amendments to the Indictable Offences (Preliminary Enquiry) Act to allow the process to be consistent with the provisions of the Recording of Court Proceedings Act of 1991. These amendments will soon be introduced in the other place.

**Sen. R. Montano:** I just want to understand something. Are you referring to the UK legislation which has solved the problem that was raised in the other place about sections 9(1)(d) and 9(4)? Are you asking us to pass the legislation this afternoon and you will bring back amendments later?

**Sen. The Hon. J. Jeremie:** No. I am asking you to be aware of when the Indictable Offences (Amdt.) Act comes before us, it will incorporate provisions which are required to bring in the CAT reporting system.

The Bill comprises two clauses and requires a simple majority vote. Clause 2 of the Bill seeks to insert after section 63 of the Act, new sections 63A, 63B and

63C. Sen. Montano, before you came I did speak to the main purposes of the Summary Courts (Amdt.) Bill. The proposed new section 63A provides that a written statement by a witness shall be admitted in a summary trial as evidence to the like extent as oral evidence. This deals with written statements. However, before a witness' statement can be admitted into evidence by agreement it must satisfy the following conditions. We are speaking to written statements which are statements of fact and not controverted.

The statement must be signed by the person who made it, that is, the witness. These are the checks and balances. The witness must swear this statement before a Clerk of the Peace or Justice of the Peace. It must be authenticated by a certificate signed by the Clerk of the Peace or Justice of the Peace. The statement must also contain a declaration by the witness to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it is tendered in evidence, he would be liable to prosecution, if he wilfully stated anything which he knew to be false or did not believe to be true.

There are two other conditions which protect the integrity of the process. Before the statement is tendered into evidence, a copy of the statement is given to each of the other parties to the proceedings and if none of the other parties or the attorneys within seven days from the date on which a copy of the statement was given to them, serves a notice on the party so proposing, objecting to the statement being tendered into evidence—that is a recommendation which was made in the other place by the Member for Pointe-a-Pierre, Miss Lucky. Perhaps, that is what you were speaking about. At the time I undertook not to correct it, but to take note of it to see whether or not we should put it in the Bill.

**Sen. R. Montano:** Basically, and this would speed up things. What the Member for Pointe-a-Pierre said in relation to the Bill in the other place, I had intended to say it this afternoon subject to what the Attorney General is saying. If I could humbly request of the Attorney General to repeat the undertakings that he gave, not that they will be appropriate. I should say that we intend to support this Bill, so I do not see a problem. I am trying to deal with problems that I see as potential flaws in the Bill. I will not mention them if you tell me that you are going to deal with them and you give an undertaking to deal with them in committee or that they would be dealt with. Am I making sense?

**Sen. The Hon. J. Jeremie:** Well, unusually. [*Laughter*]

If I might be allowed to clarify what I said, the amendments which were made in the House should be before us as the Bill which comes from the House. The

Member for Pointe-a-Pierre made three suggestions, two of which are reflected in the Bill which has come to us from the House and one in relation to which I could not give the assurance that I will take it on board. I have since reconsidered and I have taken it on board. An amendment will be circulated. I am speaking to it. I am grateful for once for the intervention of Sen. R. Montano. [*Laughter*] I am also grateful for his expression of support at this easterly stage.

**Sen. Mark:** Tentatively. [*Laughter*]

**Sen. The Hon. J. Jeremie:** Although I note the speedy retraction of Sen. Mark in this respect. He is the loyal opposition. He will oppose anything. If I propose that today is Wednesday he will object to that. Let us move on.

The following conditions will also have effect in relation to any written statement which is tendered into evidence under this proposed new section. If the statement is made by a person under 18 years of age, it must state his age—these are checks and balances to protect the integrity of the process—and a named adult of his choice who was present with him when it was made. If the statement is made by a person who cannot read or write, it must have been read to him before he signed it or put his mark or thumb print on it and must be accompanied by a declaration by the person who read it confirming that he had done so. If it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (3)(d) must be accompanied by a copy of that document or such information as may be necessary in order to enable the party on whom it was served to inspect that document or copy of it.

Under this new clause even where a written statement becomes admissible as evidence by virtue of the clause, the party by whom or on whose behalf a copy of the statement was served, may call upon that person to give evidence, or the court may of its own motion or on the application of a party to the proceedings, require that a person should attend before the court to give evidence.

At the Committee stage in the other place a proposal was made—I come with completely clean hands as always—by the Member for Pointe-a-Pierre for the inclusion of a proviso to this clause which exists under the Criminal Justice Act, 1967, of the United Kingdom. At that time I undertook to look at the proviso and if necessary to include it at a later stage. We have had the opportunity to examine the proviso and we agree that it should be included in the amendment.

The proviso will provide that where the parties had agreed before or during the hearing that the statement is to be tendered, the requirement for service and

the consequent seven-day objection period under paragraphs (d) and (e) would not apply. It is proposed that the proviso would be in the form of a new subclause (3)(a), of the proposed clause 63A of the Bill and that amendment would be moved at the Committee stage of the debate.

The proposed new clause 63B provides the procedure to be followed for the admissibility of a written statement into evidence. Either party must file the statement with the Clerk of the Peace of the Magistrates' Court and a file copy must be served on the other party to the proceedings as soon as practicable. Once the statement is admitted into evidence it must be marked by the magistrate as a court exhibit and kept together with all the other written statements and any other evidence. Where a statement is to be admitted in evidence and the magistrate is of the opinion that a part of it is inadmissible, he would write against that part, the words, "treated as inadmissible" and then sign it. However, where it is not possible to write on the statement, the words would instead be written on a label or other mark of identification, clearly identifying the part of the statement to which the words relate and contain the signature of the magistrate and would be attached to the statement.

Where a written statement is admitted into evidence and it refers to any document or object as an exhibit, that document or object shall be identified by means of a label or other mark of identification signed by the maker of the statement. Before the magistrate treats any document or object referred to as exhibit in such a statement, as an exhibit produced and identified in court by the maker of the statement, the magistrate must be satisfied that the document or object is sufficiently described in the statement for it to be identified.

It should be noted that an accused person is entitled to submit to the magistrate that any part of a statement is inadmissible in evidence.

The proposed new clause 63C provides for any fact of which oral evidence may be given in any criminal proceeding to be admitted for the purpose of those proceedings. Under this clause an admission by any party of any such fact shall as against that party be conclusive evidence in those proceedings on the fact admitted and such admission may be made before or at the proceedings. When, however, the admission is made otherwise and in court, it must be in writing. That is the check and balance. When the admission is made in writing the person making the admission must sign it. That is a further check. Where the admission is made by a body corporate the requirement to sign the admission is on a director or manager or the secretary or clerk or some other similar officer of the body

corporate.

Where the admission is made on behalf of a defendant who is an individual his counsel is required to make it. Where the admission is made at any stage before the trial by a defendant who is an individual his counsel is required to approve it, whether at the time it was made or subsequently before or at the proceedings in question. These are checks and balances which are designed to ensure that the scales of justice are not tilted by the recommendations which we have proposed to amend the law.

An admission for the purpose of proceedings relating to any matter would be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter.

**2.00 p.m.**

An admission may, with leave of the court, be withdrawn in the proceedings for the purpose for which it is made or in the subsequent criminal proceedings relating to the same matter.

Mr. Vice-President, I now turn to the Criminal Procedure (Amdt.) Bill, 2004, which seeks to amend the parent Act, Chap. 12:02, to provide for the use of formal admissions in criminal proceedings. I said that the purpose of the last Bill was dual in scope. The procedure is of critical importance in that the prosecution would be relieved from the burden of having to prove matters which are not in dispute. For example, in narcotics cases, if the nature of the substance is admitted, the prosecution would no longer be required to send the exhibit to the Forensic Science Centre for analysis, which is what obtains at present.

Clause 3 of the Bill would insert a new section 37A into the Criminal Procedure Act, which is similar, again, to section 10 of the Criminal Justice Act, 1967 of the United Kingdom.

Subclause (1) would allow any fact of which oral evidence would be given in any criminal proceedings to be admitted by either the prosecution or the defence. The admission of that fact would then be conclusive evidence of the fact admitted.

Subclause (2) would set out the same procedural requirements as proposed for the Summary Courts Act, which I had identified before but which I would now repeat. The admission must be made before or at the proceedings. If it is made out of court, it must be made in writing. If it is made in writing, it must be signed by the person making it. In the case of a body corporate, it must be signed by the director, manager, secretary or clerk. If it is made on behalf of the defendant, it

must be made by counsel. If it is made before the trial by the defendant, it must be approved by counsel.

Under subclause (3), the admission could be used in any subsequent criminal proceeding, mirroring the provision in relation to the summary courts, which I have just detailed, relating to the same subject matter. Subclause (4) would allow for the withdrawal of the admission with the leave of the court.

Clause 4 of the Bill seeks to give effect to another recommendation of the committee. The committee recommended that judges be empowered to provide written directions to juries after consultations with attorneys-at-law for the prosecution and defence on matters of substantial complexity.

Mr. Vice-President, I wish to indicate that these written directions given by a judge would not replace the oral directions which are presently given but would rather be complementary. In the circumstances where complicated legal concepts are involved, such as prosecution for multiple murder accused, complex fraud and deduction of common design, the written directions of the trial judge would provide invaluable assistance to jurors in their deliberations.

It must be noted that the safeguard in this clause is the required consultation with counsel on both sides. The use of written statements obviates the need, in some cases, to adopt the cumbersome procedure of recording evidence in longhand, thereby relieving the court to a certain extent in those particular instances that I have described, of the time-consuming process of taking notes of evidence. That amendment would reduce the delays inherent in our Magistrates' Courts. The amendments to the Criminal Procedure Bill are also useful in improving the administration of justice in Trinidad and Tobago.

As I have said, Senators may wish to note that the office of the DPP, the Law Reform Commission and, of course, the Judiciary, support these Bills. The Government sees this as our first initiative in this place to treat with some of the backlogs in the administration of justice system. This would go some way towards correcting the imbalance which presently exists in the system and which is really being exploited by the criminals in our midst.

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

Mr. Vice-President, I said those words just one second before I anticipated—I think this is not an unfair anticipation—the support of all Senators opposite in relation to this legislation, as they have already indicated.

Thank you, Mr. Vice-President. Again, with these words, I beg to move.

*Question proposed*.

**Sen. Robin Montano:** Mr. Vice-President, these Bills ought to be non-contentious and, indeed, as far as we are concerned, they are. What is, of course, contentious is a host of other matters that one might say are related to the Bill. Dealing with the Bills themselves, in the first instance, if I could turn to: "an Act to amend the Summary Courts Act", I was a little concerned when I read the first Bill, but now having seen the amendments that came from the other place, I am pleased to see that matters that were of concern to me, for example:

> "The right of a party either by himself or through his attorney-at-law, would in seven days from the date on which the copy of a statement was given can serve notice on the party so proposing to object to the statement."

After that, at clause 10, there would be the usual arguments. I was also pleased to see in the Bill the inclusion that:

> "(5) Not withstanding that a written statement made by any person may be admissible as evidence that—
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> (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence.
>
> (b) the court may of its own motion or on the application of any party to the proceedings may require that person to attend before the court and give evidence."

Mr. Vice-President, I would respectfully suggest to the Attorney General, that perhaps out of an abundance of caution and looking to be fair, that he could put in a (c). At 63A (5)(c) you might want to consider, at the committee stage, putting in a third subclause of that (5)(a) and (b) by adding a 5(c). Basically, this new subclause would say: "If a party wishes to cross-examine on the statement, he may be allowed to do so."

Mr. Vice-President, it may be very useful—thinking as a practising lawyer, and we do this in the High Court from time to time—when matters come up, for example, injunctions where sometimes you cross-examine persons on their affidavits rather than have to go through the long evidence-in-chief, you could short-circuit a great deal of time by just using the affidavit as the evidence-in-chief. The lawyer on the other side, whether it was for the plaintiff or the defendant, is then allowed to cross-examine the opponent on his affidavit so that evidence-in-chief is not taken as such but is deemed to be taken by the affidavit

or, in this case, coming back to the Bill, deemed to be taken via the statement.

Again, Mr. Vice-President, as a practising lawyer, I may not wish to have a statement admitted because I would want to cross-examine on the statement and from what I have read in this Bill, I would be prevented from so doing. Once the statement is admitted it goes in and that is it. However, I may be more inclined to allow the statement in—speaking as a defence attorney or a prosecuting attorney—if I could put the maker of the statement in the witness box and I could say to the maker of the statement: "You have said this, that and the other, now what about this and that?"

I would respectfully suggest to the Attorney General that he seriously consider this suggestion especially as what we are talking about is saving the court's time. I think it would go a long way because, as I said, at the risk of repeating myself: if not, attorneys are going to err on the side of caution and object to statements because they would not be allowed to cross-examine on them.

I could see in instances where it is just a formal piece of evidence, for example, a photographer might say: "Yes, I took this photograph on June 20, 2005." There would be no question other than the photograph was taken, so there would be no cross-examination in that regard. Mr. Vice-President, if we are serious about saving time—and this is a good step—we should allow it so that you would probably find that both sides—with a provision like this, if they were allowed to cross-examine on the statements—may be only too happy to put in statements in advance, which would help the sitting magistrate and therefore short-circuit a lot of the time taken.

Mr. Vice-President, evidence-in-chief could be painful sometimes. The rules of the court say that the witness is not allowed to be led, so he stands in the witness box and says: "Yes, my name is John Thomas. I was born on whatever date. I live wherever. Yes, I know the defendant. Yes, I was there at such and such time." And the whole evidence-in-chief business could take an hour, three hours or more.

The Attorney General is quite right. This provision would go a long way towards doing away with all of these formalities. But you run the risk now, on the other side of the coin, whether you are a prosecutor or a defence attorney of saying: "If I admit this statement, I am going to run into problems because I would not get an opportunity to cross-examine this particular witness."

Mr. Vice-President, I make this suggestion humbly and with respect and I ask that it be contained. The fact that if you do not contain it, we would vote against the Bill, no; the fact of the matter is, if you do not accept my suggestion, you would not quite achieve the efficiency you want to achieve. I give you this suggestion; please think about it seriously so that when we get into committee we could deal with it.

There is one more matter I wish to raise on the Bill, directly, and that is section 63C (2) (c):

> "An admission under this section—
>
> (c) where made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;"

With the greatest respect, I think that we are going to run into some real problems here. First of all, under the Companies Act, and in companies generally, only certain persons are allowed to sign certain documents. For example, if the company is buying or selling something, there has to be a board resolution, and the document usually has to be under seal, and signed by a director and the secretary. Alternatively, sometimes the document does not have to be under seal but board approval is still required; sometimes it is not required but it is recommended, and again it ought to be signed either by the director or the secretary.

The chief executive officer is not a director but I think, again, we want to do things right and we want to make sure that nobody comes back and says: "Yes, we know the legislation says it could be signed by a clerk, but that clerk had no authority whatsoever to sign on behalf of the company." So you are going to end up in a big legal mess, trust me, with the company saying that the clerk had no authority. In fact, the company could say: "The clerk signed the admission because we fired him for stealing from us." Mr. Vice-President, I am making it up as I go along, but I am giving an example of how companies could try and wriggle out of this. If you turn around to the company and say, "But there is a strict liability here" this is going to put genuine companies at serious risk.

Mr. Vice-President, I would readily admit to being mischievous here. Let us say there is an allegation involving my good friend, the Minister of Tourism, with his family's company at Pier 1, and there is an allegation of drugs and so on, and a clerk says—[*Interruption*] I said I am, being mischievous—[*Interruption*] No, I am not casting stones!

**Sen. Joseph:** But you are on record. You cannot be mischievous and be on record.

**Sen. Jeremie:** Mr. Vice-President—

**Sen. R. Montano:** Okay, I withdraw it. I withdraw it. I was "kicksing". [*Crosstalk*] I said I was not making an allegation. I was trying to give an example. Let us not use Pier 1. Let us use "X" company. There is an allegation of drug dealing of some kind and the clerk signs off on an admission; the company can get into serious trouble. I wish to make it absolutely clear that I was casting no stones and no aspersions. I was making it a little personal because I always find that personal examples are better, that is all. There was no malice and if there was any offence caused, I humbly apologize; I sincerely do.

Mr. Vice-President, that does not detract from the point I was making which is that a clerk could get a company into trouble on this. I would, again, humbly suggest to the Attorney General that when we get into committee we amend this. Again, this would be a good thing because it would mean that it is being brought to the notice of the board.

> "It is signed by either the director or the secretary or such other person as the board may in writing direct."

And you would solve the problem in that regard. I know that I was making fun before, but I am being very serious now when I say that it is potentially an extremely dangerous provision for any person who has a company that employs clerks.

Mr. Vice-President, the same could be said, incidentally, in the Act to amend the Criminal Procedure Act. Looking at clause 3 of the Bill and 37 A(2)(c), the same argument that I have just made with respect to the Summary Courts Act could also be made to this section as well. Again, the arguments that I have put forward for this Bill apply *mutatis mutandis* to this other Bill.

It would be remiss of me in my duties and according to my oath as a Senator, which is to serve the Republic of Trinidad and Tobago as faithfully as possible, not to mention in this Summary Courts Bill that while the Bill is most welcome and it is going to assist, unfortunately, it is like putting a plaster over a cancer. It is almost too little too late. We have a real problem in the Summary Courts. The magistrates are overworked, overburdened and underpaid. Their staffs are overworked, overburdened and underpaid. The conditions of most Magistrates' Courts are deplorable. I am not this afternoon trying to make political mileage and say things like $850 million for a stadium but you cannot fix a Magistrates' Court.

I want, if it is possible, to try to keep this debate entirely online with what is good for Trinidad and Tobago. I would urge my fellow Senators and those on the other side, please, let us try to concentrate on this. It cannot be right that in this month of July 2005, five years into the 21st Century, with so much money flowing into our coffers today that we cannot fix our judicial system.

Mr. Vice-President, the Summary Courts are the engine that drives the judicial car. As I said, in relation to the Caribbean Court of Justice (CCJ) Bill, it is like having a pretty car but the engine does not work. Moneys need to be spent downstairs in the Magistracy. We need—not in any particular order—better surroundings for them. All Magistrates' Courts save and except Port of Spain but, certainly, San Fernando, are a mess. It is an absolute disgrace!

I do not practise often in the Magistrates' Court so I cannot say what Tobago is like but I would guess—dollars to doughnuts—that the Tobago Magistrates' Court is an absolute horror. I know because I have been there. The Chaguanas Magistrates' Court is awful. I also know that Magistrates' Courts in other parts of the country are in dire need of repair. We need good surroundings! We need trained staff! Every day, each magistrate in this country has a list of approximately 1,500 cases before him or her—1,500 cases a day! In the name of heaven, how do you expect any human being to get through those cases?

I know how the game is played. If you have a losing case, you are going to try to adjourn it as much as possible. If you have a winning case you are going to try to get it on as quickly as possible; those are the facts! But the system is stacked in favour of your case never being heard.

Right now, I have a very small matter in the Magistrates' Court in San Fernando, which is due to be heard at the end of this month. I went trying to get that matter heard for one year and every time I have gone to San Fernando the matter was adjourned because the magistrate simply cannot hear the case. I do not blame the magistrate; I have no criticism whatsoever of the magistrate, but I know it is physically impossible. If you think that my particular little story is a horror story, there are those practitioners who could give you real horror stories.

Persons who are called as witnesses get fed up and they would say: "Why should I bother to go. I go to court three and four times and every time I go, the matter is put off." It is perfectly true that some cases are heard, but they constitute a very small percentage and as a result justice is not being done. While it is a given in a democracy that all right-thinking persons must subscribe to the notion that it is better for 10 guilty men to go free than one innocent man to hang, it is equally true that justice is not done when the matter is not heard or when it is delayed.

Mr. Vice-President, the delays in the judicial system impact on the High Court, the Court of Appeal and everything else. The delays are inherent all the way through. The judicial system is simply now breaking down; it encourages inefficiency and it also creates systems that impact directly on the crime situation. For example, with respect to kidnapping, magistrates have been turning around recently and saying: "No, this is too serious a charge; I am not going to grant you bail." People are then remanded into custody but they have the common law right to apply to a judge in chambers. After three or four months pass and their matters are still not heard, the judge quite rightly now begins to worry about the inconvenience to a man who has not been found guilty of any crime being incarcerated *ad infinitum*. The judge would now say: "Let us get the show on the road." Persons who might not otherwise have been granted bail if their matters had been heard early would now be out on bail.

Mr. Vice-President, we have a problem in this country where we tend to bury our collective heads, ostrich-like, in the sand and we tend to focus only on one little part of the picture without seeing the whole picture and how it interconnects. If we do not deal with the picture—what is the latest buzz word?—in a holistic manner, we are going to keep putting on a plaster to fix a broken arm here; another plaster to fix a cancer there and so it would go. The thing would never work and the country would continue to deteriorate! The issue is far too important.

Mr. Vice-President, I believe that I have made my point. Speaking for my colleagues and myself, the thrust of these two Bills is commendable. I respectfully ask the Attorney General to pay attention to the comments and the suggestions I have made. I would not call them criticisms because, as I have said, I agree with the thrust of this Bill. The name of the game is that when we are making laws, we must make laws for everybody. We must make laws that are fair and right for the citizenry.

Mr. Vice-President, with these words, and with the hope that my suggestions are taken, I am happy to support these Bills.

Thank you.

**2.30 p.m.**

**Sen. Dana Seetahal:** Mr. Vice-President, the two Bills before us represent a step in the direction towards making criminal procedure similar to civil procedure, in that a lot of the evidence can actually be given in writing and can be agreed upon. In this way I expect, and it is hoped, these matters will proceed much more

speedily. An example of what is not the kind of situation we want is the current preliminary enquiry, which has been going on for a year or two. If we were to put in a lot of the evidence in that case, through written documents, then things would be speeded up to the advantage of the accused persons in particular, who might have to wait to hear the feat and the witnesses in the matter.

There is really, as Sen. Montano has said, not much contention with the two Bills. There are a couple of matters that I want to get clarified before agreeing. The first one relates to the Summary Courts (Amdt.) Act. What this amendment clearly provides is for where there are formal issues such as the tendering of photographs and/or medical evidence which can already go through in a medical certificate. If you want to have the actual doctor give evidence, these statements can be tendered in evidence. No way in the Act is there clear recognition that if the evidence goes in, the witnesses can still be called for cross-examination. Sen. R. Montano mentioned that implicit in the provisions is that likelihood.

The clauses merely provide for the admissibility into the evidence, in the same manner as it would if it were given orally; the statements which would mean the evidence-in-chief before cross-examination can be given in a written form, unless of course, the parties object.

It seems to me, the "(e)" amendment is included, if there were recognition in this Bill, that the statement having gone in, the parties require the witness to attend for cross-examination. If there were recognition in that, in fact the "(e)", which was included, after discussion in the other place, would not be necessary because the attorneys for the parties may not object to the tendering of that written statement, if it is clearly known that they can cross-examine. The only benefit to the attorneys would be the ability to cross-examine. To me, there is nothing in these provisions preventing the attorney from cross-examining, even though the witness statements have gone in. You tender the witness statements instead of calling the witnesses then you say: "Fine, I have them." This is just as you will in a constitutional motion; I look at this and I want to cross-examine from paragraph X, Y and Z. There is nothing preventing that, but it is my contention that that could be made clearer in this, maybe instead of "(e)" it is stated where—I do not know how you would put it substantially—the witness should be called to attend for cross-examination if required by the parties—something of that nature. Then I imagine that there would be no objection, and we would not have the chance. Every time you think, maybe I would want that witness for cross-examination, you do not agree and then you have the photographers, the chemists and the tool

mark officers, all those people waiting there to attend. That would be my recommendation in respect of that point.

Now, there is a provision in both pieces of legislation which talks about formal admissions. This is different from statements. Formal admissions would be where all of us agree you are the owner of the vehicle, you are this or you are that; certain facts are agreed and you do not have to call the witnesses to prove it. However, it seems to me that you are defeating all of these provisions. If you say that admission may be withdrawn for the purpose for which it was made in any subsequent proceedings, what is there to prevent an accused person or his lawyer from agreeing to things at the preliminary enquiry stage and at the trial withdrawing that admission? Then you have to go through the trouble now of bringing the witnesses to prove it. I do not see the benefit of this. I really do not see that if you admit certain things, you should be permitted to withdraw them. It does not happen in civil proceedings. I do not see why that should be allowed. I really think that subclause (4) should be struck off. It is of no benefit. It defeats the whole purpose of that second part of both pieces of legislation. I think I have those points covered.

My second-to-last point, in relation to the substance of the Bill, is in relation to the Criminal Procedure Act. The provisions in this case, I mean the actual clauses, relate to trial because the Criminal Procedure Act deals with indictable trial. It does not relate to the preliminary enquiry. Everyone knows, I think, that an indictable trial constitutes of a preliminary enquiry and a trial. All the evidence is led at the preliminary enquiry and then you have the trial. If the provision is made for the admission at the trial level only, then it means that all of the evidence would have to be led in any event at the preliminary enquiry. You will hear all the evidence and go through the trouble of proving that you own the car. You do this, that and everything and then you come to the trial and you say: "Okay, we will admit all these things." Should there not be a provision that either this section relates to the preliminary enquiry or should there not be a provision in the Preliminary Enquiry Act itself to make this sensible?

Finally, this is my fourth point in relation to the substantive provision. The last point, that a judge may, after consultation with Counsel, provide written directions. Actually, to the Attorney General, this is possible now in the law and in a couple of cases certain judges have actually done so. But many judges do not know that they can do it. The result is that you find that some judges, of late, take two days to sum up what might otherwise be a simple matter and then you have a jury hopelessly confused. In our jurisdiction, juries sit for three hours maximum

and if you have two days of directions and you are sitting for three hours, by the end of that time it is no wonder they cannot agree. I think that this is a very useful provision. It would be more useful to have something called "specimen directions", as exists in the United States and England. You might find that other judges who like to write, writing pages and pages and pages; the specimen directions can come as part of the rules, or something of that nature. You do not want to further confuse the jury. They might adjourn for five days to prepare those notes.

Having made the points I wish to make on the Act, I wish to say that these provisions really only relate to formal matters and agreement, as we have said, to formal admissions, which is that you are short-circuiting those kinds of provisions. What about the more serious kind of evidence? Yesterday's newspaper carried a story where a case of kidnapping at the High Court was thrown out. It involved a police officer. I am not speaking about the case with the two SRPs that are now being charged. Let us make it clear, this is a case involving a police officer and another person who were already charged with kidnapping and the case against both of them was dismissed. Why was it dismissed? It was because the witness did not show up to give evidence. It was not that they just got off. Apparently attempts have been made to get that witness and the witness refused to come. It does not take a rocket scientist to figure out why he would not want to come.

The situation is not singular to Trinidad and Tobago. I think this article was already referred to by one of my colleagues. On June 28, 2005, the *Trinidad Guardian* quoting the *Guardian* newspaper of London indicated that only 20 per cent of the kidnappings in England resulted in prosecution, because victims refused to give evidence. The obvious reason is that the victims are afraid. The vast majority of the victims in that jurisdiction related to people of Afro-Caribbean, Chinese and Southern-Asian descent.

**Sen. Jeremie:** Thank you for giving way Sen. Seetahal. The proposals which are before the other place, in relation to the amendments for the Indictable Offences (Preliminary Enquiry) Act, would take care of reluctant witnesses, shall we say. I hope that problem which I appreciate is a critical problem—I know the Minister of National Security sitting on my right, understands just how critical the problem is. He lives with it on a daily basis. It is something that the Government has no choice, at this time, but to deal with.

**Sen. D. Seetahal:** Mr. Vice-President, I appreciate what the Attorney General is saying. I have looked at that draft legislation but I wish to refer to something in

addition to that because the legislation that is being proposed in the United Kingdom is not the provision of statements when witnesses are afraid, which is another thing which we already have in Jamaica. It is the provision for offences to be proven without calling the witnesses at all and you can use photographs of injuries and scientific evidence if the witness is afraid. If the witness is afraid at all, in lieu of the witness giving any evidence, you use photographs of injuries, photographs of things, scientific evidence and tape recordings and the law can provide for that. We all think that you need to have a witness go in the box such as in a case of rape and say: "I did not consent", which is actually a foolish thing. Rape victims are allowed to say: "I went, this person grabbed me, took me to the car, went down to Maracas and he put his penis inside me and so on." Did you consent to him having sex? The person looks at you—this is where she has given evidence that a knife was at her throat and had to say: "I did not consent". That kind of evidence is no longer necessary in relation to domestic violence situations in the United Kingdom. In fact, you do not need the victims, because through fear many of these victims do not want to come. They do not want to end up stabbed or their children killed. What you have is the actual physical evidence being enough.

The English are considering amending the law in relation to kidnapping to prove the kidnappings that way. I think that is a matter we could consider. It might be too far for us now, but why wait? What we always do is that we look at the English and they are two or five steps ahead and we take one plodding step and another plodding step. Right now, the legislation provides for where a witness gives evidence to the preliminary enquiry and dies, that evidence can be given at the trial. In the case of Clint Huggins, for instance, where he was killed to prevent him giving evidence in trial, we all know what happened. That evidence had been in Trinidad and Tobago since 1950 and it was not in 1996 that it was invented by the then Attorney General. It was there, it was not utilized. We had that law. Now is the time to go ahead to provide—in cases where people intimidate others from giving evidence—this kind of legislation. What the Attorney General is talking about in his other proposals with respect to the English—where this is based on section 33, Criminal Justice Act, where a witness does not wish to give evidence through fear or because he is kept out of the way. This is separate, apart from the photograph which is really a step ahead. This is where you have a witness giving a statement to the police. He comes and says: "I have been kidnapped by so and so. I knew him. He was my neighbour's friend." And then the time comes the next day for him to go to an ID parade. He is so traumatized by the event, he says: "I am not going." What do you do? Under the current law, suppose he does not have any

physical injuries and we have the physical injuries legislation, what do you do? You cannot go forward and release the person. That is the end of that, but if he has given a statement—that is in England now and this is in Jamaica—and he has identified the persons and you know that it is through fear, then, that statement can be used as evidence.

Of course, there are cautions that the judge must give to the jury and all of that, but this legislation has been tested and proven and it has been shown to be no violation of the accused's rights under the European Convention on Human Rights in England, which would be equivalent to our right of a fair trial, because he would get the opportunity, through his lawyers, to challenge other bits of evidence. It is that part of the evidence. Also, she would get the directions by the judge. I guess they balance it with the question of fear. Right now we have many things going on in relation to not only kidnapping, but that is probably because it is an offence to the person. It is a direct contact and people naturally are traumatized when they have been in contact with someone, or the agent of that person for days. They are told if no payment is made we will kill you and dump you in a cesspit or words to that effect. That is one example of what I heard happened in matters of the past.

I know that the Government has the intention, at some point, of moving ahead with such legislation. I would like to indicate that I think, while what we have here will be a step in the right direction, it is a mere step because it really only deals with formal matters that are usually not contentious anyway. When we are talking about victims who are intimidated—and it happens all the time in the Magistrates' Court, the trial court and the High Court, in relation to serious matters—the longer a matter goes on, I think Sen. R. Montano made the point, they lose interest. You cannot have the police providing private protection to everybody. These days we have so many of that kind of situation. People are fearful. That is why our detection rate is not high, because people do not want to give evidence. You hear them say: "I do not want to give evidence. I am not going to say anything. I do not want my name on the television". There will be that face blanked out.

My personal view, of course, is that we all have to die some time and we want to ensure that the people are dealt with, so you go with it. That is my view, but not everyone would share that view. Not everyone believes in reincarnation and that the people pay for it sorely. The point is that people also have to be concerned about their children and that kind of thing. We need to ensure that criminal

elements do not seize the advantages that they currently enjoy under the law, to avoid prosecution.

Talking about the positive laws that come into effect, I have seen some signs of it. We have the AIDS legislation on the Order Paper for quite some time. I know it was argued in the other place. I was wondering why we have not seen it here, because to my mind that is another useful piece of legislation that will serve a very good social purpose in this country, as it has been in other places such as Bermuda, the Bahamas and many other countries that came up at an international conference in Jamaica a few years ago. It was pointed out that there were many, many prosecutions for people who deliberately transmitted AIDS. If you remember a few years ago, a woman called Simona Frika, came from Switzerland or Sweden and she was enjoying Tobago life. Whilst she was doing so, she was deliberately transmitting the AIDS virus without telling people that she had it. It is not that you want to ban people who have AIDS from having sex; you want to ensure that they let their partners know, so that they can take the proper measures if they wish. That is the purpose of that law. I think it is useful in many, many ways.

I thought I would add that because I find some pieces of the legislation appear to be delayed too long and we cannot get on with making the country a better place, as we hope for it to be. Mr. Vice-President, thank you very much.

**Sen. Wade Mark:** Mr. Vice-President, I rise to make a contribution on these two Bills that are being taken conjointly: a Bill to amend the Summary Courts Act and the Criminal Procedure (Amdt.) Bill. Let me say from the very outset that I am going to anchor my contribution within the framework of some statements that were made sometime ago and which were circulated in this Parliament, as they relate to the very Bills that we have before us.

As you recall, it was made by both the Attorney General and the hon. Minister of National Security in another place, but as courtesy would have it, we were graced with copies of the statement. Not only were those statements circulated here, but they were also widely published and circulated in the various newspapers of Trinidad and Tobago. The matter before us today was put in some perspective by the hon. Attorney General in what could be described as a fighting mood. He and his colleague, the Minister of National Security, were in a fighting mood when, in an effort to obviously allay fears in the population concerning the escalating crime wave in the country, the Attorney General is quoted as saying—the statement I have before me is page 4 of his statement which was delivered. He

was making reference to the task that faced not only the Attorney General but I dare say the Government and people of the country. He said:

> "Mr. Speaker, to enable and empower the Judiciary to function more efficiently, the Government lays today a package of emergency legislation which we propose to debate to finality.
>
> The legislation is aimed at ensuring speedy trials…"

I think this was what we have before us as part of his legislative emergency package. It continues:

> "for those accused of crime; protecting victims and witnesses to ensure the justice system is not undermined by existing loopholes; strengthening the powers of the Director of Public Prosecutions to expedite prosecution of serious offences;"

Of course, he went on to talk about empowering and modernizing the police service to treat with the crime problem now facing the country.

Part of the legislative package, as announced by the hon. Attorney General on June 07, 2005, dealt with the Summary Courts (Amdt.) Bill, which we are addressing today and the Criminal Procedure (Amdt.) Bill, which we are also addressing today. He mentioned the Administration of Justice (Miscellaneous Provisions) Bill and of course the Bail (Amdt.) Bill, 2005. He repeated Bills that were defeated in the past: the Constitution (Amdt.) Bill, the Police Service Reform Bill, the Police Complaints Authority Bill and the Corporal Punishment (Offenders over 18) (Amdt.) Bill, 2005.

Of course, the Minister of National Security joined him in this particular exercise and his statement was extremely comprehensive. It was very long on talk, as far as I am concerned, and short on action, as we would see and the country is witnessing today.

This Government has been in office for almost four years. I would round it to four years. After four years in power—the Minister said three and one half—and after we have witnessed almost wholesale slaughter, murders, kidnappings, robberies and rapes of our citizens, the Government brings to Parliament two basically procedural legislative matters, which it is very doubtful, will have any significant dent on the criminal system and the rate and pace of criminal activities in Trinidad and Tobago. He mentioned in his opening remarks—I would like to ask him if he could make a copy of the report that was mentioned, which was

submitted to the Chief Justice sometime in February, 2003. This committee was chaired by Justice Mark Mohammed, Senior Counsel, to address delays or some of the reasons for delays in the criminal justice system. The committee was mandated to consider measures that could be adopted to shorten criminal trials in the High Court and Magistrates' Court.

It is a pity that the Attorney General did not make a copy of that particular report to the Chief Justice, that was chaired by Justice Mark Mohammed, available to the honourable Senate. I am sure that many more issues would have been embedded or housed in that report. I have not seen the report.

**Sen. Jeremie:** On a point of information. The report was addressed to the Chief Justice by one of his judges, Mr. Justice Mark Mohammed. I am sure that you will join me in the observation that I cannot make that report available to you, if the report is addressed to the Chief Justice.

**Sen. W. Mark:** I made a submission and if the Attorney General is saying that report cannot be submitted to the Parliament; it is not to me. Are you still acting as Prime Minister? I think you should exercise protocol today and allow me to speak without any interruptions. I made the submission to the Attorney General, whether it was possible, but if he is saying to this honourable Senate that the report is not possible, because it is addressed to the Chief Justice, I take it.

My colleagues have already stated—in terms of the proposed measures that are submitted—it has been addressed by the hon. Attorney General to deal with the question of speeding up trials in an effort to at least make the administration of the criminal justice system more efficient and, I dare say, more effective. The Attorney General is of the view that these measures—with the necessary amendments that have been made, based on the report submitted by Justice Mark Mohammed—would be a long way in achieving that objective. I do not know, maybe it will, maybe it may; I do not know. What I do know is that before a person can be put on trial, he must first be caught. You know, and the Attorney General is aware, that the Government has failed this nation miserably in apprehending criminals who are roaming this country and who are literally in charge of this nation. They are kidnapping you at will. They murder you at the slightest provocation. We are talking about speeding up trials, that is what these Bills are about. The Government wants to speed up trials. How can you speed up trials when we are told—I would like the Attorney General to tell this Parliament if it is a fact that for 2005, to date, we have not been able to record one conviction

as it relates to murders in this country? I saw this in the headline of a newspaper approximately two weeks ago.

**Sen. Jeremie:** Would you give way? I think the Director of Public Prosecutions, as you know—I imagine that you will have great difficulty with me prosecuting persons. There is an independent office, under the Constitution which is called the Director of Public Prosecutions. I think that he has dealt with that comprehensively in his statement to the media. That article which appeared in the *Newsday* and which, as the habitual Opposition, you raised this afternoon, was exploded by the DPP as being incorrect.

**Sen. W. Mark:** I have not read it.

**Sen. Jeremie:** Perhaps, you ought to read it.

**Sen. W. Mark:** You said that the *Newsday* is what, the Opposition?

**Sen. Jeremie:** I said you.

**Sen. W. Mark:** "Awh", I thought you were attacking the *Newsday* because I know that is the mouthpiece of your party. I thought you were attacking them.

**Sen. Jeremie:** Habitual Opposition.

**Sen. W. Mark:** I thought you were attacking. My responsibility is to remove you. I am not here to make you look nice. That is what I am here about.

**Sen. Jeremie:** That is your sole purpose.

**Sen. W. Mark:** Let me address you, Mr. Vice-President. He is on his way out. The Attorney General is on his way out. I am not really addressing him. I am addressing you.

I make this point because this Government is about fooling people. They are trying to hoodwink the population. That is what this is about. The Government has brought these measures today. They mamaguyed the population approximately three weeks ago. Whenever this Government is under heat, they try to introduce something to get the heat off their bodies and this package of measures that we are now debating has to be seen in that context.

As we speak today, we have had many promises from the Minister of National Security, since June 07—a big, fat speech. We got it from the Attorney General. Since that speech, on June 07, we have recorded more than 32 murders in this country. When they were speaking on June 07, 2005 there were approximately 154 people murdered in the country. Since that speech, we have had more than

182 recorded and as we speak the numbers are rising. At end of the day, the Government brings these pieces of legislation. We know that they require a simple majority, but we ask the question: What was the Government doing for the last four years? What was this regime doing for the last four years? They have presided over bloodshed. They have presided over mayhem in this nation and there is no slowing down. Therefore, I see these Bills today, whilst they may bring some relief in the process, as he hopes, of speeding up the administration of justice, I do not see that the population will get any relief at the ground level. We have a Government that has done nothing, substantially speaking, to deal with the system of justice at the magistrate level. That is why, when we are talking about speeding up trials, we must think about, for instance, the kind of difficulties and challenges that ordinary people face on a daily basis at the level of the Magistracy in this country.

My information is that there are more than 450,000 cases at the level of the Magistracy in the country. Every time you go to the Magistrates' Court, the majority of cases are being postponed and adjourned. People are frustrated. What can we expect from these pieces of legislation that are designed, as the hon. Minister said, to speed up trials and speed up the justice process? I would want to first advise the Attorney General that to speed up the process, they have to deal with the criminal forces in this country that are holding this nation to ransom virtually. That is their first port of call, if they are serious, because this Government, as you know, is about distraction and public relations.

This same Attorney General, my good friend, made a big statement. I want to refer to that statement, because it was all part of the crime package that we are addressing today. We are dealing with two Bills but there are many more that I suspect we will have to address. The Attorney General was very clear in his language. He said that they are going to hang people. [*Interruption*] Of course, you said that you are going to hang. I do not expect you to repeat the mistake of the former Attorney General, Keith Sobion, who hung a man illegally and against the rule of law, Glen Ashby. I do not expect him to do that. I expect him to observe the rule of law. That is the proper thing to do. The point is that the Attorney General threatened to resume hangings and he went to the point of reading a death warrant to a prisoner when he knew that he had given an undertaking to the Privy Council in London that he will not proceed until that particular individual matter was heard properly. That is what Lord Thompson, or Thomas said in a written statement to the media in the country. He accused the Attorney General of breaking the law, by reading the death warrant to Lester Pitman, or Jairam. Thank you very much.

**Sen. Jeremie:** He has corrected himself. If it was Mr. Pitman, you are speaking about you were making a clear mistake.

**Sen. W. Mark:** No, we are talking about Jairam Ramsingh. I got a letter from the same gentleman, Lord Thomas, seeking a position/intervention to the Attorney General and the Minister of National Security, in order to safeguard the rule of law in Trinidad and Tobago. What we have is a lot of hot air coming out from this Government. This Government has done nothing to protect its citizens. The first basic function of any Government is to provide security, peace and safety for its citizens and this Government has failed miserably in doing so. The Government has come today to mamaguy the population, and fool the country, as if it is doing something about crime. This is supposed to be a legislative package to deal with crime, when the Government knows it is involved in crime. I would like to know, Mr. Vice-President, I saw in a statement—

**Sen. Dr. Saith:** On a point of order. Yesterday we had the unfortunate situation where people felt that they were being attacked when they were accused of doing things. The hon. Senator has accused this Government of being involved in crime and I wish that he withdraw the statement.

**Sen. W. Mark:** I want to know who put the cocaine in Sadiq Baksh's tank.

**Sen. Abdul-Hamid:** Sadiq Baksh.

**Sen. W. Mark:** I understand it is you.

**Sen. Dr. Saith:** That also has to be withdrawn.

**Sen. Baksh:** Bilal Abdulah is the man.

**Mr. Vice-President:** As the Leader of Government Business said—yesterday we had a situation coming up and I had to ask Sen. Dumas to withdraw the statement. I ask you to withdraw that statement on the same basis.

**Sen. W. Mark:** That they are involved in crime?

**Mr. Vice-President:** That they are involved in crime.

**Sen. W. Mark:** No, the chap was making the statement about guns. He was talking about guns.

**Mr. Vice-President:** Sen. Mark!

**Sen. W. Mark:** All right, if you want me to withdraw it let us withdraw it. Criminal activities in this country. I want the Minister who is acting Prime Minister to tell this country what steps are being taken. We want to know what

steps are being taken to deal with the question of the cocaine. We are talking about criminal activities. We have information that there are people in this Senate, another House, another person who is an advisor to the Prime Minister at Whitehall and another who is properly seated in the Ministry of Foreign Affairs, four of them were involved in a plot, along with policemen from the Crime Suppression Unit in South Trinidad who were responsible for planting cocaine and the mortar in the water tank of Sen. Sadiq Baksh.

**Sen. Jeremie:** Mr. Vice-President, the Senator is stating that he has information without providing the source of the information to the Senate.

**Sen. W. Mark:** I cannot give you that information. Information has reached me.

**Sen. Jeremie:** Is this a fish market?

**Sen. W. Mark:** Fish market?

**Mr. Vice-President:** We are dealing with two particular bits of legislation. Candidly, I do not see what contribution the offerings you are making will make to these bits of legislation. Could you please stay with the legislation we are debating?

**Sen. W. Mark:** Mr. Vice-President, may I indicate again, according to the Attorney General, the central focus of this amendment to the Summary Courts Act is to allow written statements of a witness, which contained matters not in dispute, to be admitted into evidence upon the agreement of the defence and the prosecution. That is the central focus of the legislation before us.

As we are on the question of witness, I would like to know what efforts are being made by this administration to provide a proper protection programme for witnesses in this country. If the object of the legislation, according to the Attorney General, is to allow written statements of a witness, which contain matters not in dispute, to be admitted into evidence upon the agreement of the defence and the prosecution, I would like to humbly ask the Attorney General what steps are being taken by this administration to deal with a proper witness protection programme in Trinidad and Tobago? That is what I would like the Attorney General to at least indicate to this honourable Senate when he is winding up his contribution. What programme exists at this time for that purpose?

When we talk about crime and speedy trials, I again link that to the inability of the police because of the lack of resources, because of the fact that the technology is very backward and there are a lot of rogue elements in the police service today,

as we recently saw. They were arrested, but they were only released according to Sen. Dana Seetahal, because people are afraid to identify criminals, because if they identify criminals they may become history. If you want to speed up the administration of the criminal justice system in Trinidad and Tobago, one of the first responsibilities of the Government in that context is to ensure that witnesses are given total protection against criminals and bandits. There were two persons who were arrested by the police, who were detained for 48 hours under the law, who the police suspected were responsible for the kidnapping of the Nath brothers from Sangre Grande and yet they are free today.

**Sen. Jeremie:** Would you give way? That is not true. I do not know where you have received your information.

**Sen. Dr. Saith:** He is misleading the Senate.

**Sen. Jeremie:** But as of two hours ago those persons were on ID parade.

**Sen. W. Mark:** Why do you not make these statements as soon as they appear in the newspapers? Those things are appearing in the English newspapers. You are not speaking about them. I am happy to speak about them because it appears to me that I would have to be the one to force this Attorney General to clarify issues in this country when they arise, because they arise and nobody talks about them and I raise them. We are talking about witnesses here, not the context of written statements. If you are travelling—[*Interruption*]

**Sen. Jeremie:** There is quite a lot that goes on, through you, Mr. Vice-President, in relation to the security services and matters of national security which we cannot come here and discuss.

**Sen. W. Mark:** I do not expect you to, I know that.

**Sen. Jeremie:** We cannot speak every time the newspapers decide, for whatever reason, to publish something. I am simply telling you, I am correcting you on that statement.

**Sen. W. Mark:** That was made by the newspapers, not me.

**Sen. Jeremie:** Misleading the Senate.

**Sen. W. Mark:** The newspapers, not me.

**Sen. Dr. Saith:** You make it known.

**Sen. W. Mark:** I was quoting the newspapers. It is not Wade Mark. The newspapers had that report. The Attorney General did not object to that report. I

am raising the question about witnesses. I would like the Attorney General to tell us here today and to tell the country how am I, as a citizen of this country, to make a distinction between a police and a thief and a police and a kidnapper? From my information, we are talking about witnesses in the context of a criminal matter. There is the situation where people are driving, going about their lawful duty and business and they are stopped by men in blue with the big insignia indicating "Police". You are driving going about your lawful and civil responsibilities, you as a lawful citizen will stop because you believe it is a policeman. You will feel that it is a genuine policeman. Those people are kidnappers. They are the ones who are kidnapping people. They are wearing police uniforms. We are now being told that some of them are Special Reserve Police Officers. I would like the hon. Attorney General, who seems to like national security a lot—like he wants to take over national security, the way he is going. I think he and his colleague are very cooperative on this matter. I would like him, because his colleague, the hon. Minister of National Security, is not here, to tell this Parliament and through this Parliament, the nation, what are citizens to do if they are driving in the dark hours of the evening and they are stopped by blue shirts police or grey? Some of them have the deep blue jerseys also; it is the deep blue and grey.

**Sen. Dr. McKenzie:** "Lick dem down."

**Sen. W. Mark:** When they stop you at 9.00 o'clock in the night and you are driving home—

**Sen. Dr. McKenzie:** "Lick dem down."

**Sen. W. Mark:** What do I do?

**Sen. Dr. McKenzie:** "Lick dem dong."

**Sen. W. Mark:** I want the Attorney General to tell this Parliament, because citizens are scared to death. I am getting advice from a good colleague from Tobago. I know how Tobagonians think. If I am driving my heavy vehicle, I have no choice, because I do not know. I do not know who is bandit. I do not know who is thief. I do not know who is police. I do not know who is fake. We need to get some guidance from the Government, because I want to remind you, the hon. Attorney General of the country is on public record as saying to the nation that the way the Anti-Corruption Squad went about issuing and raiding people's homes was wrong. He had to draw up new guidelines to avoid the mistakes that they made in the past. I would like the Attorney General to tell this country what must ordinary citizens, big people, and businessmen do when they are travelling,

whether in the day or in the night, and they are confronted with these elements who are saying they are police officers and these elements stop them? Attorney General, would you like to respond to me on this matter?

**Mr. Vice-President:** The Attorney General would have his time to respond.

**Sen. W. Mark:** All right. This is all part of the witness exercise. The reason I raised this point with you is that there are people who are afraid to come forward. I have not seen any steps being taken by this regime to really address this problem. How are we going to deal with the criminal justice system? How are we going to speed up trials in this country, when we do not have the witnesses? Somebody argued sometime ago that in this country, when there are high profile trials, we may have to bring in foreigners. People are now saying that maybe the time has come to bring foreign jurors into this country because the citizens of the country who are either jurors or potential witnesses seem to be living in fear. I do not know and we do not know what steps are being taken by the Government to deal with the issue of providing protection to citizens who feel endangered, because of the criminal forces that exist in this country.

We are becoming numb, almost, to criminal activities in this country. I want to come to your island but I am fearful now. I see where in tranquil, calm and peaceful Tobago, the crime wave has now gone across as well. This is a witness protection programme. You are talking about six persons being murdered so far for the year, on the island of Tobago. It is not only six persons who have been murdered, but the number of robberies that are taking place. When these things happen, how are we going to get the witness that this Bill is saying, that is required? In other words, deal with the written statements which are obtained in the matter not in a dispute to be admitted into evidence upon the agreement of the defence and the prosecution. I am saying to hon. Attorney General that he has a lot more work to do than he is currently doing.

I want to indicate that a new trend is emerging in this country; another frightening trend. I know Jamaica is a nation today that is divided into camps. We have not reached that stage yet.

**3.30 p.m.**

Mr. Vice-President, when a high-ranking "Don" dies or some high-ranking criminal in a gang dies, AK-47s which are powerful weapons in the hands of the criminals are used, and like a policeman or a soldier who has died, they are given a 21-gun salute as a mark of respect on this person's passing. That is what takes place in Jamaica when a criminal dies. It is the same thing I read in the

newspapers some time ago—and the Attorney General could correct me if I am wrong—that somewhere in Diego Martin an alleged criminal, a gang member died. He was murdered. Mr. Vice-President, do you know what happened in Diego Martin on that fateful day, some weeks ago? I understand there was a 12-gun salute and probably there might have been more than 12 shots that rang into the air. Could you imagine there are criminals in this country and when they are burying their dead they are now shooting in the air as a mark of respect? Where are we going? The police had to rush to Diego Martin to see if they could have dealt with these people but by the time they reached the men had already put their guns away and they were gone. This is the atmosphere in which we are discussing these Bills. This is the background in which we are saying that witnesses could come forward.

Mr. Vice-President, if you go to the Criminal Procedure (Amdt.) Bill at clause 4, you would see where it says:

> "The judge may, after consultation with the counsel for the prosecution and, the accused person or his counsel, provide written directions to the jury on matters of substantial complexity."

I hope that the Attorney General could provide us with some greater clarification on this matter, particularly given the matter I raised a while ago about the fear that is gripping this nation, involving not only jurors, but witnesses. This particular amendment that is, clause 4, section 42A, I would like the Attorney General to provide us with some clarification on these matters.

Mr. Vice-President, if I may just touch briefly on a speech made by the Minister of National Security dated June 07 on page 9.

> "…we have been receiving assistance in strengthening our law enforcement capabilities to deal with kidnappings from the FBI, DEA, Interpol and other international organizations."

That is all part of dealing with the criminal situation that exists in this country. All I ask of the Attorney General of this country: Why is it, after three years, we have not had the DEA, FBI, Interpol and other international organizations tracking down the criminals that planted cocaine and mortar in the water tank of Sadiq Baksh? We are bringing down these people to deal with kidnappings and they are saying it is helping. But how come, after three years, they have not brought down any Interpol personnel, they have not brought down any FBI person, they have not brought down anybody from the DEA or other international organizations to deal with a Member of Parliament? He was a sitting Member of Parliament for San

Fernando West, and up to now—I want the Attorney General in his winding up to tell us what he is doing about that criminal matter. But we have a good idea who the criminals are. I told you.

**Sen. R. Montano:** Corporal Joseph Charles and somebody else. I cannot remember his name.

**Mr. Vice-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. S. Baksh*]

*Question put and agreed to.*

**Sen. W. Mark:** Mr. Vice-President, I want to just share with you again a piece in this statement because I want to let you know, and this honourable Senate must be aware of the fact that the Bills that we are debating today are not being debated in a vacuum. It was against the background of very powerful interventions made by two hon. Ministers who sit in this Senate, the Attorney General and the Minister of National Security. I remind our colleagues that this contribution has to be seen in the context of some of the important statements made by these two honourable, gentlemen when they spoke on June 07.

I turn to page 1 of the statement of the Minister of National Security. He said:

> "…over the last three years…"

I am making reference—

> "the Government has implemented a series of initiatives aimed at building the capacity of the law enforcement agencies and targeting criminal elements in the society."

It goes on to say that:

> "The approach is a multi-dimensional one in which we have been making progress, but the issues of gang-related homicides and kidnappings continue to provide a serious challenge."

Mr. Vice-President, I am seeing these things as words. I would like the hon. Attorney General to tell this country today what progress has been made because here we are debating two Bills that are designed to speed up trials at the level of the High Court and the Magistrates' Court as well. So it is the criminal justice system we are dealing with and it starts from the Magistrates' Court and it goes right up to Court of Appeal and the Privy Council, by extension. What kind of

progress has been recorded to date? The population is not seeing the kind of progress that it is being told about.

We are told by the hon. Minister of National Security, as we deal with witnesses and witness protection programme and he says, and I quote from page 5:

> "…our best intelligence indicates that there are some 66 known gangs in Trinidad and Tobago."

I was not even aware that there are so many known gangs in Trinidad and Tobago, but it was revealed to us by the hon. Minister of National Security. He went on to tell us:

> "We further estimate that there are some 500 hard core members. We also have a sense of the areas in which they operate."

Mr. Vice-President, if we want to speed up trials at the level of the criminal justice system, we first have to arrest the criminals. We must do that. If what we are being told by the Minister of National Security is true, and I have no reason to believe otherwise, then Trinidad and Tobago is in deep trouble. There are 66 known gangs. He did not say the unknown ones, because there may be gangs existing in this country that are not known to the Minister of National Security and the hon. Attorney General and we are talking about 500 hard core members. Mr. Vice-President, do you see the kind of trouble we are in?

Do you see how these Bills are making mockery of the whole system in this country? These are limited measures that will, at the end of the day, not have the kind of impact that they ought to have. What this Attorney General ought to have been doing since he came into office in 2003 is making a comprehensive review of these critical pieces of legislation. The Summary Courts Act is an outdated piece of legislation. All those countries like England and Australia have modernized their legislation. We are still operating on archaic and outdated legislation and they have come to tinker with the system; amend one clause here and another there, but in terms of giving this country a comprehensive approach to crime and to the criminal justice arrangement in this country, we do not have it.

I raise these points to let you know that there is not much hope. I feel, and the citizens of this country feel that the PNM Government is incapable, is incompetent. The Attorney General is very weak; the Minister of National Security is very weak and they cannot confront the criminals in this country. You need a strong regime to do that. They need the United National Congress to confront the

criminals.

Mr. Vice-President, we confronted the criminals. You must never forget that. As my colleague said when he first came, he drew a line in the sand when I made a particular contribution. I remember my colleague making that point on the other side. We can only confront this system, we can only address, properly speaking, the criminal justice system, we can only ensure speedy trials for those persons who are on trials for all kinds of different crimes if you confront the criminals. If you do not confront the criminals—I think the Attorney General, genuinely speaking, he came in a bit late. He was not there in November 2003, but prior to that, it was clear that there was a kind of cuddling, virtually a kind of hugging up between forces that are bent on destroying, forces that are bent on disorder and forces that are supposed to maintain law and order in Trinidad and Tobago. That is what happened here.

I read the Attorney General's statement very carefully because he seems to have had a lot of information of late, and I do not doubt because as a former member of the National Security Council myself, I know that my colleague is a member of the National Security Council as Attorney General. I know that for a fact because, the former Attorney General was a member of the National Security Council.

Remember the last time the Attorney General spoke in this Chamber he told this Parliament, the nation and the world that Trinidad and Tobago faces a dangerous terrorist threat. He said, I the Attorney General say to this Parliament that we are faced with a dangerous terrorist threat. He goes further on in his statement of June 07:

> "Mr. Speaker, if the rule of law is shattered, discipline at every level of the society will be destroyed. The rule of law requires that each person, everyone in this Chamber and outside, everyone from Mucurapo…"

Is it the Jamaat al Muslimeen we are talking about in Mucurapo, or are we talking about Fatima College? I do not know.

> "to Westmoorings, from Morvant to Cedros, is subject to one law."

I am saying that the Attorney General is fighting against some very powerful forces within his own Government. I am sure of that. Because, whilst he may want to confront the terrorists and the criminals, there are many of them who are hugging and cavorting and cuddling with the very terrorists and criminals that he would like to arrest. I know of one right now who is a big advisor to the Prime Minister of Trinidad and Tobago, and he works at Whitehall. He was part of the

1990 coup. He put gun at people's head and said that as soon as the lights go off to shoot everybody. That is what we understand.

**Sen. Jeremie:** Mr. Vice-President, the Senator is imputing improper motives to the Prime Minister who he is alluding has a relationship with a known criminal.

**Sen. W. Mark:** I am not alluding to anything.

**Mr. Vice-President:** Sen. Mark, you had returned to a generally good line. You were going very well. I prefer if you stay with it within the next two minutes. Do not use the kind of references you are using please.

**Sen. W. Mark:** Mr. Vice-President, I thank you very much for allowing me to make a very calm contribution. Normally, you know I am very passionate in what I do, but I have chosen deliberately, because of the nature and the importance of this matter to be very calm because I am awaiting anxiously the Attorney General's response to some of my concerns. The most important concern I would like him to address this afternoon and to give the citizens some degree of hope, is how do we confront those persons who are wearing police uniform and stopping me, you and my daughter, my mother and our sons and our daughters on the highways and byways of Trinidad and Tobago? I would like the Attorney General to give us some advice this afternoon, because Tobago is telling me if I am driving my car to knock them down.

If these fellows are armed as they are and they stop me and I do not stop, they might shoot me in my head, I do not know. So, we need the Attorney General to tell the country what to do in these circumstances, and I hope in his winding up he would do that.

Mr. Vice-President, I thank you very much for allowing me to make this very brief contribution as usual.

**Sen. Prof. Kenneth Ramchand:** Mr. Vice-President, thank you for the opportunity to speak on the Bill before us. I have a brief contribution, but I promise you will hear more from me later when I speak about the aluminium smelter project in the Chatam Cap-de-Ville area. [*Interruption*] If it is midnight I will wait to talk.

Firstly, I thank the Attorney General for a presentation that was clearly and courteously focused on the Bills before us. I welcome them as a token of an intention to speed up the administration of justice. I have faith that it is a token but not tokenism.

I have always been haunted by the law's delay. As a young man I read a novel called *Bleak House* in which the celebrated case of Jarndyce and Jarndyce was written about. That case lasted three generations and the whole novel as it were, and the whole case was surrounded by a miasmic black fog. That is the image of the law's delay that dominates and the frustrations of the people and the suicide to which people are driven and the rash actions that are carried out. Because of that the law's delay has remained with me ever since. Sections of that book should be a part of the training of everybody who is involved in law and the justice system. It should be their extra reading as it were, because it does help them to see what it is they have to fight.

Mr. Vice-President, to repeat, I welcome the Summary Courts (Amdt.) (No.2) Bill, 2005, and I thank the Attorney General for his presentation but, there is always a "but", I would like to have heard from the Attorney General an overview of all the factors that contribute to delays in the administration of justice, and I would like to have gotten some spectacular examples of long delays.

I would have liked to get, in other words, a better sense of the extent of the problem so that I could see how one factor we are dealing with now is likely to impact on the whole problem, so that the Parliament and the nation would have a blueprint about where we have to go.

I cannot say next, because this seems to be a problem we have to tackle on several fronts at the same time, but I really would have liked such an overview in order that I could measure the value of what is before us.

Mr. Vice-President, some years ago somebody found a crumpled cheque in my wastepaper basket and he tried to present it and so I had a case and I had to go to court. I can tell you several times the attorneys were not ready, several times the police were not there and several times I was out of the country. I went eight times and each time there was some good excuse why the matter had to be postponed, and in the end I handed in to the policeman who was in charge of the case a written statement and I told him I was not coming back; let the magistrate send me a summons and force me to come when they were really ready to deal with this matter. Of course, they never sent for me so I do not know what has happened to the case. I am just trying to illustrate the kinds of things that happen. I am sure everybody knows the other day a magistrate in San Fernando allowed an accused in a murder case to walk because the complainant consistently failed to appear after repeated warnings. The magistrate was so desperate and he said he really had to let the fellow walk. I think he was fed up, but he was also irresponsible, but that is another matter.

These things suggest to me that although I welcome the particular amendment and I must add that I am encouraged to offer this speculation after hearing Sen. Seetahal. I jotted down this before she spoke. Would it not be possible to extend something like this, just formal matters, into other areas as well? It seems to me that just applying it to formal matters is too little. As Sen. R. Montano suggested, it is a big suppurating sore that we have and one little plaster does not help very much. But, as I said, I see the whole thing as a token of an intention to deal with the problem and I welcome that.

I wanted to emphasize an aspect of the effect of the Bill that Sen. Seetahal mentioned but which I want to double emphasize, that is, how it would assist in the rendering of justice. It is not just a matter of dealing with delay but making the rendering of justice more efficient.

We all know of witnesses who get very sweaty, flustered, nervous and forgetful when they go to court. And, I believe if that person has an opportunity with the help of an attorney, to write down that true and exact statement and vouches that this is a true statement and so forth, that would assist the court to secure convictions that, perhaps, would not have been secured if the witness had gone in there and made a fool of himself or herself out of nervousness.

The other side that I welcome is that many witnesses, as had been pointed out by several Senators, are afraid to testify—but even juries are afraid to come in with a verdict of guilty. I think witnesses who fear for their lives and the lives of their families would have an opportunity to present their testimony without having to make an appearance and getting marked.

The other thing is the case of shame. There are so many people who are unwilling to come to court because they are ashamed of what they are a victim of, and that people would laugh at them and so forth.

So these aspects of the amendment may not have been the main intention of the amendment. They may seem to be by-products, but they are very valuable bye-products, and I hope that by mentioning them I could, perhaps, add to the perspectives from which these kinds of amendments and legislation can be done, that we do not simply think in terms—and, in fact, when we tackle the problem of delay, we are not just tackling a problem of delay, but we are tackling a problem of bringing justice to bear on matters that arise.

Mr. Vice-President, with that, I thank you.

**Sen. Basharat Ali:** Mr. Vice-President, I intend to make a very short contribution in support of the Bills before us, the two that we are debating at the

moment, an Act to amend the Summary Courts Act and an Act to amend the Criminal Procedure Act.

Yesterday, I had the opportunity to read the transcript of the proceedings in the other place from two points of view. I thought the Attorney General had a very fine presentation which helped me a lot to clarify what needed to be read in these Bills that are before us.

I noticed he had an abbreviated version here I believe, and I missed a few of the things which I read yesterday.

**4.00 p.m.**

The other positive point in that debate was the fact that the Member for Pointe-a-Pierre had, I thought, an excellent contribution, which was acknowledged I would say, because there was a meeting of the minds of our Attorney General and a professional in the person of the Member for Pointe-a-Pierre. I was very pleased when I looked at the amendments that came from there. They reflected some of our concerns. I believe there is another one in another amendment which has come up.

I am hoping that is what will prevail in the future in this Senate. We have had consensus. My good friend, Sen. Robin Montano, said that our legal member—I should not say "legal member" because there is a member of the press who says that we are not legal persons; that if we say we are not a legal person, we are a foetus. He is not here today, so one of these days I will deal with him. Once again, our Sen. Dana Seetahal agreed with what was here and I think she has some proposals which we hope they will address when the time comes.

To me this is a very positive step where there is a meeting of the minds. Intellect is not the domain of any particular party, group or person and I am hoping that we will have a lot more of that. We need to solve a lot of problems and if we do not take these steps—these are small steps as Sen. Prof. Ramchand mentioned—but any little step on the way to progress, to a speeding up of the administration of justice, I think, is a positive step in trying to reduce our crime rate.

Mr. Vice-President, I have another matter which I wish to bring to the attention of this Senate. It relates overall to crime and crime bills, et cetera. It is a letter which is addressed to me as a Senator and which I received at my mailing address at 65 Frederick Street, and which purports to come from Organizations Representative of The Private Sector of Trinidad and Tobago. The topic is, "High Level Of Crime And Deterioration—"

**Mr. Vice-President:** Repeat the name of the organization!

**Sen. B. Ali:** That is what I am saying. It purports to be "Organizations Representative of the Private Sector of Trinidad and Tobago". That is the heading. It is addressed to me and the heading of the letter is, "High Level Of Crime And Deterioration In Security Of Residents of Trinidad and Tobago". [*Interruption*]

My colleague, Sen. Dana Seetahal, is saying that it is an anonymous letter and that is one of the problems we have. This letter says that there are 18 private sector organizations. I have checked and there are only 17 on this list. The letter refers to their previous advertisements and their appeal to the Members of Parliament. The penultimate paragraph says:

> "We have attached a copy of this advertisement for your information."

This is the advertisement which is a message to the 36 Members of Parliament of Trinidad and Tobago.

> "As an Independent Senator, we hold you personally responsible for the discharge of your Constitutional duties in implantation of these measures.
>
> We stand ready to assist you in every way possible to do so."

This letter is signed with a squiggle—I do not know who that is—on behalf of the 17 listed organizations, in alphabetical order, from A to T, and there is no address. So, if I wanted to acknowledge this letter, I could not because there is no address to it.

I looked at the advertisement which appeared in the newspaper and which I had seen before—"A message to the 36 Members of Parliament of Trinidad & Tobago". From the original message, they had included a paragraph which says:

> "We now call on you and your 31 colleagues in the Upper House, to effect a meaningful and sustained reduction in crime within the next 90 days especially in the area of Murders, Kidnappings, Rapes, Robberies, Road Fatalities."

Those are the areas identified. Then they say:

> "Some of the things to be actioned immediately are:"

and they give a long list of action items.

> "(a) Act within existing laws…
>
> Forensic Science Centre"

police, Judiciary, witness protection plan, jails, et cetera, and to debate certain things in Parliament—Police Reform Bills with relevant amendments, DNA Bill—which I realize should be DNA Act, Breathalyzer Act, which may be a bill, and a number of other items, Road traffic radar timing devices—there is no bill apparently for that. They say there is an Act, I did not know that. I consulted with my colleague and she does not know either. They mention a Jury Act to accommodate foreign jurors. Apparently there is a Jury Act, but this probably means that they expect to have this amended. Parole Act, I do not know whether we have a Parole Act; I do not think so. Lastly, there are a couple of other items categorized: kidnappings, which we have because we have gone through the whole Anti-Kidnapping Act some time ago. In fact, I think that my maiden speech was on that Bill.

I take great exception to having a letter sent to me like this. In fact, when I get something like that in my mail box, I consider it junk mail and I treat it accordingly.

**Sen. King:** Do the same thing we did.

**Sen. B. Ali:** My fellow Senators are saying that is what they did—they threw it out. I would like to say I read it. I recognize my responsibility as a Member of Parliament. We are all Members of Parliament—the 36 there and the 31 here. Evidently the people who write these things do not even know that.

They have asked so many things of Parliament, but what are they doing? That is the question that comes up. What are they doing about the safety of their workers? All these organizations here, from AMCHAM down, have workers. How many have criticized and pled for the Occupational Safety and Health Act (OSHA) to be proclaimed? We do not hear anything about it, do we? There are big monied people in these organizations, when you look at AMCHAM, right down to the Bankers' Association of Trinidad and Tobago. They do not react to that kind of thing. That is part of safety in the workplace. They say they are all employers. Is there any safety sentiment among them which they can publicly come out and talk about? Why do they keep quiet on OSHA? They should say whether they agree or do not agree; or they have a plan to implement. Take the Government to task also.

They have a duty. I am sure they have a duty to all the people they employ and to themselves as citizens of this country. I make a plea to them to ask themselves what they are doing about sexual harassment in the workplace. [*Desk thumping*] We know; we have had our Sen. Carolyn Seepersad-Bachan talk about

that in a different context. They must ask themselves what they are doing about it. Tell us and we will say they are doing their part.

**Sen. Dr. Saith:** Senator, on a point of order. Not that I would stop you, but we all got that letter and I think by giving the publicity you are giving it here, you are playing exactly into the hands of the people who wrote the anonymous letter. Parliament is not the place for anonymous letters. [*Desk thumping*]

**Sen. B. Ali:** I take the point from Sen. The Hon. Dr. L. Saith, but I propose to continue. Let them read my contribution. Let the press bring it to their attention. I am not afraid of that. For road safety, what are they doing? Our society today is a transgressor. Nobody obeys any rules or laws. Are they themselves obeying all the road laws? Do they train their employees to obey the rules of the road? I do not see any mention of any rules of the road here. They talk about speed traps and whatnot.

I must say that I have had one good experience from one party, which would have been a member of this. This happened over the weekend. On June 02, I was going into the Churchill-Roosevelt Highway when a big yellow bread van gave me a bad drive. That van had at the back: How is my driving? Call so-and-so number. One of my passengers took the information down and on Monday, July 04, I called and said what had happened. I am very pleased to say that a gentleman called Mr. Charles Bajnath, who apparently is one of the sales managers of Kiss Baking Company called me this morning and said he had the report and that he would like to get more details. I told him I could not give him the number of the vehicle. He said it would be difficult because nobody would own up, but that they were committed to road safety because they have a large number of vans on the road and that he was going to make sure that the message I took to him would filter to all his drivers so that they would not be so reckless.

We are not only losing people in murders, but in road accidents. How accidents are caused, I do not know. There are so many factors, but we all have to start playing our part by obeying all the rules of the road. How many of us go through stop signs? I try not to. If it is very late at night and there is a dark spot, I might do it. People go through red lights as if it is their right, and we really need to do something about that.

I can continue like that. There is a role for all of us, not only in the bills that come before us. We have today a situation where we all agree on these amendments. We want to make that contribution so that the judicial process would be improved and work satisfactorily, but let us all contribute. It is not just

the 36 Members in that House and the 31 in this House who have to do it, it is all of us. We all have to take stock of what we need to do to make this place a better place.

Thank you.

**Sen. Dr. Jennifer Kernahan:** Thank you, Mr. Vice-President, for the opportunity to speak on the Bills before us today.

I just want to make a few comments on the Bills, not as a lawyer—I do not pretend to know anything about legal aspects—but simply as a citizen who is concerned about the obvious lack of governance in this country at this time and from the point of view of a mother who is very fearful for the life of her children, in 2005, as all mothers are in this country.

These Bills are a glaring example of the superficial and cavalier approach that this Government always takes to serious issues, including issues of life and death and national security. It is clear to anyone who has eyes to see that the criminal justice system in this country is practically falling apart. For the criminal justice system to work, there must be basic tenets. There must be agreement by civil society that we adhere to certain rules, laws, procedures and methods.

In my opinion, there must be basic respect for law and order. Citizens must, in the majority, have respect for law and order. The security services must be in control of arms and ammunition that are precisely for the protection of citizens and not for assault on citizens. We must have the security system firmly in control and these weapons must not be, by and large, in the hands of criminals.

For the system to function as we expect, in order to maintain our personal and national security, there must be legislation that is current and relevant, constantly seeking to be one step ahead of the negative elements. There must be citizens who trust the Government and the security forces.

There are many more elements that are necessary for the proper functioning of the criminal justice system and the society for us to maintain high levels of personal and national security, but these are the basic ones we are confronted with today that are being undermined. In the middle of the scenario in which practically none of these elements operate in our society today as we expect them to operate, we have this Government bringing these pieces of legislation which have to do with one tiny aspect of the problem.

What about the other aspects of the criminal justice system? These Bills purport to speed up trials, to increase the rate at which criminals may be

adjudicated through the system, but how can they talk about speeding up the process when the whole process is flawed; when citizens have no faith in the system; when there are more guns in the hands of criminals than the security forces?

This is not just propaganda. Recently there was a situation at the West End Police Station—it was reported in the newspapers—where the policemen were asked to go out on a particular raid. When they assembled, it was found that there were not enough guns to go around. Some of the policemen were asked to attach themselves to a group that was armed. The policemen in that situation refused to go out on these raids and some of them went back home, according to newspaper reports. I do not know if the Attorney General or the Minister of National Security refuted that report. That is a report we had in the newspaper in 2005 and we are talking about enacting legislation to speed up the trial of criminals, when the measures necessary to shore up the system are being undermined and ignored.

Sen. Dana Seetahal, in her contribution, explained that even these pieces of legislation that purport to speed up the trials and time frame within which people can be processed and prosecuted deal only with formal evidence, not necessarily with substantive evidence of witnesses who may be afraid to come forward and face the court.

Mr. Vice-President, even if we are going to look at this small aspect of the whole justice system, which is under attack, we are looking at a very small aspect of this small aspect because we are just dealing with the mere formality of formal evidence and not the real problem we have in the society where people are actually walking free because people are simply afraid to testify. It is no wonder that people are afraid to come forward and testify if there is a situation where more guns are in the hands of criminals than are in the hands of the police.

I made the point already in this Senate that the criminal justice system is in serious jeopardy because everybody has to face the reality—judges, magistrates, the policemen, lawyers, civilians—that their personal security is in danger if they confront the criminals head-on. Unless the Government is prepared to deal very seriously with the question of the proliferation of arms in the hands of lawless elements, we are literally spinning top in mud. How are these pieces of legislation going to help us?

We have to look at these pieces of legislation also, in the context of the Chief Justice's statements at the beginning of the law term, to which the Attorney General alluded. He also said in that statement that if the criminal justice system

is not attended to—he spoke about the infrastructural dilapidation; he spoke about the lack of procedures in the Magistrates' Court and High Court; the lack of technology—that people would take justice into their own hands.

This is exactly what has come to pass two or three years later. We are seeing a very large percentage of killings and nobody is coming forward to give witness against the people. A large percentage of the killings that are taking place are revenge killings. People have literally taken the law into their own hands. People do not last two days after gunning down someone. The next two or three days they themselves are gunned down by the friends and family. There is a domino effect. The criminals have literally taken the law into their own hands. They have no respect for the police or the army.

We have seen instances in this country where police and army personnel are themselves victims of criminal activity. We had a young army person in Laventille who was shot in cold blood. The police are being shot at and so on. So, it has reached the point where they do not even have respect for the security forces because they have as many guns as the security forces and they know that, so they do not have any problem. So what about us?

If these criminals do not have respect for the security forces, and they are now on the receiving end of acts of criminal violence, what are we to do? How are we to protect ourselves if even the army and the police are under attack? The Chief Justice pointed out these problems two to three years ago and all have come to pass. Therefore, as one Senator said here this afternoon, we have a feeling that these Bills represent too little, too late.

I want to look at these Bills in the context of what we might be able to glean with respect to Government policy on crime. This is the only context in which I can look at these bills. Several organizations have been making representations with respect to what Government should do about crime and what they expect representatives in the Parliament to do about crime. One of these was Communities Mobilizing Against Crime (CMAC).

This organization in a letter to me—and I suppose to all Senators—dated June 06, 2005 made several proposals with respect to what is necessary to curb this terror that grips this nation at this time. Several serious proposals were made. We are in July and all these proposals have gone to the appropriate authorities and this is all we can come up with—a procedural matter which deals with purely formal evidence as a big crime fighting initiative. I am certain that civil society will be appalled that we are debating this Bill after all the proposals and concerns

expressed by them with respect to the measures that the Government should take with respect to crime.

This particular document mirrors what I just expressed with respect to the paralysis, almost, that grips the society. It says:

There is no question that people are living in fear and the soul of our nation is gone. People confine themselves to their homes when darkness falls…

It went on to give a number of proposals and they said that none of these would require new legislation.

**Mr. Vice-President:** Hon. Senators, I shall have to ask Sen. Dr. Kernahan to continue after the tea break. It is 4.30 p.m., and the Senate will now be suspended for tea. We return at 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Mr. Vice-President:** Hon. Senator, when the Senate was in progress when we suspended, you had spoken for 15 minutes, so you have another 30 minutes in the first instance. You may continue.

**Sen. Dr. J. Kernahan:** Mr. Vice-President, thank you. This document from which I am reading—Communities Mobilizing Against Crime (CMAC)—I would have thought that this would have been an organization which would have been able to have some influence on the thinking of the Government, and the position of the Government with respect to national security, since they represent the views of a wide cross-section of citizens of this country. As they have stated, they studied the issue and they have met with a number of key figures and I quote:

> "CMAC has met with the Prime Minister, the Chief Justice, the Minister of National Security, the DPP, Senior Police Officials, Opposition MPs, locally elected members of Parliament, religious leaders and community activists."

Mr. Vice-President, obviously, this is an organization that has studied the problem and they are very concerned about the problems of the fear and terror that persons in this country are facing on an everyday basis. No one knows who will be next and who will fall victim to the kidnappers, police bandits and criminals who are out there.

Mr. Vice-President, CMAC made a number of recommendations in their document, and they said that none of these recommendations require new legislation and I quote:

> "A serious will to arrest crime is all that is necessary."

So, obviously, a wide cross section of the citizens out there has the distinct impression that a serious will to arrest crime is not a part of the Government's policy.

Mr. Vice-President, some of the measures that this organization recommended—and I will go through some of them very quickly—are mirrored also in the Government's policy statement made by the Minister of National Security. So, it is not that the Government is theoretically at variance with what citizens are saying. They recognize what are the problems. The question is, as I asked yesterday, who will bell the cats?

Mr. Vice-President, some of the measures quoted here are:

> "1) Targets must be set for the Commissioner of Police and other Senior officers with rigorous measurement. Our discussions last year with the then Chairman of the Police Service Commission revealed that the Minister of National Security can set these targets and hold the COP accountable for the achievement of these targets. Target setting and performance measurement are fundamental principles of effective management.
>
> 2) Raise standards of qualifications for police officers and improve their compensation packages and training. Apply polygraph testing to new applicants..."

They also advocated bringing in non-local experts and special investigators to gather evidence on rogue cops. That is a big talking point on all the radio stations, on the street corners and in all the bars. Rogue cops have become the central problem of threatening national security in the country. We have said so over and over in this Parliament. What is the Minister of National Security doing about rogue cops? No evidence has emerged that anything is being done about rogue cops. They continue to operate with impunity. Even as we speak, we are seeing this filtering into newspaper reports.

Mr. Vice-President, this organization says and I quote:

> "Our nation is small, hence truly independent internal investigative officers are hard to find, and, impossible to protect from rogue cops and

> their criminal 'friends'. These rogue cops are undoubtedly stymieing the efforts of the dedicated police officers. CMAC strongly urges the authorities to contract with the FBI, Scotland Yard, or the RCMP to obtain proven, dedicated and tenacious crime fighters for a limited period of time to address this debilitating effect of 'rogue cops'."

Mr. Vice-President, the Minister of National Security has made certain statements with respect to internal security coming in and so forth, but I do not know how long we have to wait; I do not know how many of us must die; and I do not know how many young persons must die before we see these measures being implemented and before we see results. You know, talk is good—the intentions are fine and these plans are fine—but we need to see the results. The results that we are presently seeing are leading us in the opposite direction from where we want to go. So, we are very concerned; everybody is concerned; and the whole country is concerned.

They talked about DNA testing—this is something that has been mentioned over and over in both Houses of this Parliament—and upgrading the technology used to apprehend and convict criminals.

We have a situation where witnesses are afraid to come forward because every bandit has a gun, or if he does not have one, he is able to rent one at the very least. Mr. Vice-President, there are 16-and 17-year-olds who have access to guns. We have to depend on higher levels of technology to successfully prosecute the bandits and criminals in the society, so this DNA testing is extremely important.

They talked about the tremendous backlog of cases at the Forensic Science Centre and so forth; the contracting of personnel from abroad; and the contracting out of the DNA testing. This must be done to combat the criminals that are running wild in our society.

Mr. Vice-President, they also had certain recommendations with respect to the Judiciary like the speeding up of justice, convicting criminals and getting them off the streets. Now, this Bill purports to speed up justice, but this is a piece of a piece of what we need to do. It has almost no relevance to the major problems that are facing us in the society today.

They mentioned that the Chief Justice must issue strong guidelines to all judges and magistrates to take into account the nation's crisis, and to be less tolerant with those charged with serious crimes like murders, kidnappings, possession of illegal weapons and road deaths.

They also said that the Government must provide significant additional funding and more spending autonomy for the Judiciary with the necessary accountability mechanisms in place. They also said that there should be no reason why, even if for a specified period of time, the Judiciary cannot be given a budget allocation with simultaneous funds under the spending and control of the Chief Justice. Mr. Vice-President, these are things that have already been discussed in this Parliament.

The Chief Justice already talked about the need for the Judiciary to be more independent, in terms of funding; in terms of spending; and in terms of being able to take care of the criminal justice system.

They also talked about what we have spoken here ad nauseam about the appointment of additional magistrates and the building and renovation of courts to the standards appropriate for effective justice. They went on to highlight the conditions at the San Fernando Magistrates' Court—the intolerable physical infrastructure and so forth.

Mr. Vice-President, all this has been said ad nauseam to this Government and, yet, we are not seeing that fervour or the political will of what this organization talked about and to actually implement these measures to preserve the criminal justice system. The criminals can be dealt with in a speedy and effective manner. A piece of legislation like this is just a small part of the problem.

They talked about replacing police prosecutors with more legally qualified, trained and well-paid public prosecutors who can secure a high conviction rate. They talked about prison reform, including the improvement of prison conditions; the full utilization of the new Maximum Security Prison facilities and rehabilitation.

Mr. Vice-President, with respect to the whole criminal justice system, the prison reform is an essential part of that. This Government has proposals for prison reform for over three years and they are just sitting on it. Nobody knows what is happening, and the conditions at the prisons are getting worse and worse. At present, the prisons are practically a breeding ground for criminal activity, where criminals go and get their "masters" and "PhDs" in criminal activities. When they go in there they come out more hardened and more learned criminals than they were before. This is what is happening in our society. This Government is fiddling while Rome burns. They also talked about the carnage on the roads and so forth.

These are comprehensive proposals made by a respectable community organization which has met with top leaders in Government, business and so forth in this society. As far as I can tell—I am subject to correction—none of these proposals have been taken on board. Instead what we get are two itsy bitsy pieces of legislation which purport to make some sort of dent in the terrifying situation that we are facing in this country.

I am appalled and I am sure that our whole nation is appalled this afternoon. How can we understand this total disrespect for Parliament and the people of this country who are fighting for their very lives? How can we understand the disrespect and the callousness that this Government displays in bringing these two Bills to Parliament at this stage of our lives, when they have ignored all the infrastructural and technical upgrades that can be made? We have the money; we have the personnel; and all the necessary elements to put into the system and make it better. As CMAC said, apparently, this Government does not have the political will to do so. As I said, crime pays politically.

Mr. Vice-President, if you are in a position where you can ignore the evidence of rising criminal activity because these guys will do your dirty work for you when election time comes around, then perhaps, that is a good reason to ignore the criminal activity in this country, but the chickens will come home to roost. People are going now into businesses for themselves. You cannot control crime totally under conditions like these.

For young people, a gun is a means of protection; a gun is a means of acquiring whatever you need in the society; and every one of us is exposed. It is not going to be the Opposition, the trade unions or political enemies and so forth who are going to feel the brunt of this terror, death and destruction. Everybody is going to feel it. The chickens are going to come home to roost.

Mr. Vice-President, when I looked at statements made by the Government over the last couple of years and so forth, if you try to glean what is the Government's policy and why are they not doing what they are supposed to be doing; and why they are doing what they are not supposed to be doing, you get a bit of insight when you take a sequential look at certain statements that they made over the last couple of years, which have led to this grand presentation today of these two itsy bitsy pieces of legislation to deal with crime and to process criminals faster and so forth.

Another organization mirrored the views of CMAC and this organization is called Citizens for a Better Trinidad and Tobago (CBTT). They have said exactly what CMAC has said, but they have said it in a more forceful way and I quote:

> "CBTT President Harrack Balramsingh said: 'Many of the kidnappings and murders were drug-related and the longer we take to recognize this fact, the more the crime situation will worsen.'
>
> Balramsingh said the bite can be taken out of crime in 2004 and beyond 'if a concerted effort is made to crack down on the drug lords and traders.'"

He also said and I quote:

> "…there was an urgent need 'for the removal of corrupt cops from the Police Service' because all officers must be above reproach in the war against crime."

Mr. Vice-President, this is the general thinking in our society. But in spite of this general consensus that we need to move against rogue cops; we need to crack down on the drug lords; we need to increase the police patrols; and we need to reduce the kidnapping and murder rates in Trinidad and Tobago, what can we glean from the Government's personal statements with respect to the Government's intention and its thinking on this situation?

Mr. Vice-President, I would like to quote the *Newsday* dated January 14, 2004 when a statement was attributed to the Prime Minister of this country and I quote:

> "Manning said Government was employing a strategy designed to ensure national stability and security. 'The stability of the country vis-à-vis the Jamaat is always uppermost in the government's mind,' the Prime Minister, stated, adding that the mere fact that 1990 occurred once meant that it could happen again. 'Therefore we have decided to be safe rather than sorry,' he said. He said therefore that in some instances the government would be firm (in dealing with the Jamaat) while in other instances it would seek to pacify."

Mr. Vice-President, I want to repeat the last part:

> "…while in other instances if would seek to pacify."

Mr. Vice-President, from what I gather, the Government's policy toward crime is a policy of pacification; it is a policy of a hands-off approach to the criminal elements, because crime pays politically. This is what the Prime Minister

said. He said that the Government would seek to pacify. How could a Prime Minister who is presiding over record-breaking murder rates in this country and kidnapping—breaking all the records—the pain, the blood and the proliferation of guns. There are 18-year-olds and 17-year-olds who are shooting citizens in cold blood and going to court smiling. How can we understand a statement like this: the Government would seek to pacify! This is why we have to be fearful in this country, because this is the Government's policy. The policy of pacification is at the heart of the problem. This is why we will continue to suffer as long as the PNM is in power.

Mr. Vice-President, let us look at some statements that have come out from the Government's agents over the last few months. The Minister of National Security on Friday, February 27, 2004 said and I quote:

> "Notwithstanding the unacceptable levels of crime and criminal activities in Trinidad and Tobago in 2003, our challenge this year was to ensure that our citizens, players and spectators alike, as well as visitors to our shores, enjoy a safe and crime-free Carnival."

Mr. Vice-President, that was a major policy statement. So, while people are dying here, day in and day out—the murder rate is almost a murder a day—one of the major policy statements by the Minister of National Security was that we were going to have a crime-free Carnival.

What happened before that and what happened after the mas' was over was that citizens had to fend for themselves and so forth. The Minister was clear that the Government was going to ensure that visitors to our shores were going to have a crime-free Carnival. Mr. Vice-President, this is the Government's policy statement. This is why what is happening now in our society will continue to happen even at a faster rate. This is cosmetic. The visitors came down here and they had a nice, clean and safe Carnival and they went back home, but we are the ones who have to face the bandits, the criminals and the police at nights.

Mr. Vice-President, another statement made by the Minister explains why nothing is being done to curb crime and criminals in this country. This is also based on the Bills that were presented here this afternoon. I want to quote him and he said:

> "Mr. Deputy Speaker, we want to assure Members of this honourable House, and by extension the general population, that our law enforcement agencies would continue to be challenged to increase security and safety of its citizens. …this Government will spare no effort to provide them

> with the required resources, be it financial, human, material or training to ensure the restoration of acceptable levels of security in Trinidad and Tobago.
>
> Our role as the Executive in the Ministry of National Security is to insist that once these resources are provided, the performance levels would be enhanced commensurately."

Mr. Vice-President, these are fighting words; these are strong words; and these are important words and they would probably serve to allay the fears and the terror of persons who do not know.

What has happened since then? This was in February, 2004 and this is over a year ago. What has happened? Who has been called to account? What resources have been given to the police and the agents of national security? I know a lot of money has been spent. Over $1.9 billion was spent in this last budget. I do not know how the money was spent, because we have not seen any results.

Mr. Vice-President, what we care about is result; we care that we can send our children out and we can rest assured that they would come back to us; we care that when we are driving home late at nights, after Parliament, if we are stopped by two policemen, we do not have to run. One senior police officer in the Sangre Grande district advised us recently—they had a crime meeting—that police road blocks are not made up of two policemen, so if you see two policemen at a purported road block in the night, mash gas. This is the advice that we are getting from the police in 2005.

**Sen. Mark:** Mash gas!

**Sen. Dr. J. Kernahan:** This is the legislation that this Government would bring to the Parliament. They have done nothing to deal with the collapse of the judicial system in this country. There are no Magistrates' Courts being built; no infrastructure; and no technology. The Chief Justice made several calls for a number of things to be done and so far they have done nothing, and senior police officers are telling us to "mash gas" if you see two policemen in the night. Mr. Vice-President, this is frightening.

Mr. Vice-President, this Government has absolutely no shame to come before Parliament and the nation with this type of legislation when terror rules the street day and night in this country. Mr. Vice-President, we want to see results.

The Minister of National Security told us that he would give the enforcement agencies all the materials that they need in terms of human resources, material

resources, their performance levels must be enhanced and they must account. This is what CMAC advocated. The Commissioner of Police must have the jurisdiction to make each regional police chief accountable. What has happened over one year, two years or three years? How long must we wait. Nothing is happening.

**Sen. Yuille-Williams:** On a point of order. Clearly, we have been sitting and listening to the hon. Senator, but I do not see the relationship between what she is saying and what is in the Bill. We have tried—I think the whole Parliament has tried—but there is a limit to how far you could go. There is nothing that she is saying that is related to the Bill. Please, we have come here to do work and to do serious business and, of course, this is not right.

**Sen. Mark:** This is not relevant because you have to go home and you have Cabinet tomorrow. No, we are here for the night.

**Mr. Vice-President:** Hon. Senator, I have taken note of the statement made by Sen. Yuille-Williams. Dr. Kernahan, I think you should come back to the Bill itself. I made the point earlier. Could you please stay with the debate on the Bill?

**Sen. Prof. Ramchand:** That is a red card.

**Sen. Dr. J. Kernahan:** Mr. Vice-President, I am attempting to understand the Bill that is before us—

**Sen. Yuille-Williams:** I know that. [*Desk thumping*]

**Sen. Mark:** So why are you stopping her if you know that?

**Sen. Dr. J. Kernahan:**—in the context of the Government's policy. Mr. Vice-President, we are not able to understand this Bill before us unless we understand what the Government's policy is. Bills are brought before us based on Government's policy. I do not understand why the Senators opposite cannot understand such a simple relationship. You cannot bring Bills unless you have a policy.

**Sen. Mark:** What is your policy on crime?

**Sen. Dr. J. Kernahan:** You should bring Bills based on policy. I am going through stated Government policy and I am showing that the stated policy is at variance with these Bills. On one hand, the Government is making certain statements, and on the other hand, the Minister of National Security has vowed to do certain things, and nothing is coming through with respect to these Bills. The Bills before us are to curb crime and speed up the processing of criminals through the criminal justice system.

**Sen. Mark:** I know you are frustrated. I know how it is.

**Sen. Yuille-Williams:** I am tired.

**Sen. Mark:** I know you are tired. You should resign.

**Sen. Dr. J. Kernahan:** The policy is at variance with what we are seeing here this afternoon, so we must understand what the Government's policy is.

**Sen. Mark:** If you cannot run the country, go home.

**Sen. Dr. J. Kernahan:** Mr. Vice-President, how is the police service which is being addressed in the Criminal Procedure (Amdt.) Bill, to operate in the context of this Bill? What is the policy of the police with respect to the speeding up of crime; the processing of criminals; and taking care of the criminal justice system? We have statements being made by the Commissioner of Police, Trevor Paul, to the media. I am quoting from the *Daily Express* newspaper dated March 18, 2005 and it says:

> "'I cannot say in the police service that we have everything that we need. We can do with more.'"

Mr. Vice-President, this is the Government's policy. On one hand, the Minister of National Security purports to give all the materials; all the necessary resources and so forth to the police service so that they can deal with crime and criminal activity, and on the other hand you have the police saying that they do not have the resources to deal with crime.

Mr. Vice-President, on one hand, you have the Minister of National Security saying that crime is not as bad as it seems and, at the same time, we have a situation where we are bringing a Bill to Parliament which would help to expedite criminal trials and so forth, but this is purely formal.

Where is the legislation to make the lives of witnesses who are in serious fear for their lives easier and to testify against criminals and put them behind bars and really speed up the process? So, you have a situation where you have the police saying one thing, and the Minister of National Security saying something else. Everybody seems to be working at cross purposes and that is why we have reached to the point where citizens are openly querying the will of this Government to solve crime.

Mr. Vice-President, there are letters to the editor from New York, Trinidad and so forth which query the policy statements by the Prime Minister that crime is

temporary. What is temporary about this situation? This has been going on and it has escalated over the past four years.

**Sen. Mark:** This is very relevant; the policy of the Government.

**Sen. Dr. J. Kernahan:** Mr. Vice-President, the Government's policy is inadequate to deal with the situation that they are faced with and people are beginning to realize that. People have repudiated statements—

**Sen. Mark:** This is a failed administration and everybody knows that.

**Sen. Dr. J. Kernahan:**—by the Government in terms of crime being temporary. They are asking: is the Prime Minister blind, is he deaf or is he dumb? After all these policy statements by the junior Minister in the Ministry of National Security, we have come back to the statement that there is no "quick fix".

**Mr. Vice-President:** Hon. Senators, the speaking time of the hon. Senator has expired.

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

*Question put and agreed to.*

**Sen. Dr. J. Kernahan:** Mr. Vice-President, at the end of the four years of terror; and the escalation of crime in this country, what we have is another policy statement by a senior Government Minister that there is no "quick fix". This translated into simple English means that they have no solution; there is no foreseeable solution in the near future; and they have thrown their hands in the air. At the end of the three and a half years of terror, this what they have brought to Parliament to attack the criminal activity in this country. [*Desk thumping*] This is what they have brought; and they are telling us that this would be a serious attack on criminal activity in this country.

Mr. Vice-President, this is scandalous; this is unacceptable; and this has no relevance. They are talking about relevance, but this Bill has no relevance to what the citizens are undergoing in this country today. They can laugh and they can skin and grin because it is not their children who are being murdered—

**Sen. Mark:** They do not care.

**Sen. Dr. J. Kernahan:**—it is not their children who are being kidnapped. The terror, the trauma and the torture that mothers, fathers, sisters and brothers are experiencing, they are not experiencing that.

The Minister of National Security made a statement on the last day that he was appalled that we do not care about the Community-based Environmental Protection and Enhancement Programme (CEPEP), because they have to maintain this country. He said that there is a cemetery—I did not even know a cemetery was there—overgrown with bushes and so forth—

**Sen. Yuille-Williams:** Mr. Vice-President, on a point of order.

**Sen. Dr. J. Kernahan:** What is your point of order?

**Sen. Yuille-Williams:** Irrelevance. Mr. Vice-President, I have said it before. The Senator has about 15 more minutes so she should stick to the Bill. That is irrelevant.

**Sen. Mark:** Let the Vice-President rule.

**Mr. Vice-President:** Sen. Dr. Kernahan, I have to support the point of order raised by Sen. Yuille-Williams. You have to come back to the Bill. Please do so.

**Sen. Dr. J. Kernahan:** Mr. Vice-President, I am about to wrap up. [*Desk thumping*] I just want to finish the statement that I was making. I was not surprised that the Minister of National Security was concerned that people should be able to see cemeteries in this country, because of the carnage that they are encouraging. They are not doing anything about this, so it is important for us to know where these cemeteries are in this country. This is the macabre logic that came out of that statement by the Minster of National Security.

Mr. Vice-President, in a time when there is serious evidence where witnesses are refusing to come to court; they are refusing to confront the criminals; and they are refusing to give evidence against the criminals, there are measures in this Bill and there are aspects in this Bill which must be strengthened that will allow the victims of crime in this country to testify against their aggressors. There is a crying need for that. This Bill does not touch on that aspect. There is need for the protection of witnesses and this Bill does not address these problems. The Attorney General says that another Bill will address such problems.

Mr. Vice-President, while they are fiddling, Rome is burning. We are very concerned that essential problems are not being dealt with. One of the major aspects that this Government is refusing to deal with is rogue police officers; they are refusing to deal with the proliferation of guns in this country that are in the hands of the criminal element. The Government's policy, as stated by the Prime Minister, is pacification—pacification of the Jamaat al Muslimeen; pacification of the criminal element in this country—and, as they have said, there is no "quick

fix". They know exactly why they have said that, and we are going to continue to suffer in this country at the hands of this administration. I thank you. [*Desk thumping*]

**The Attorney General (Sen. The Hon. John Jeremie):** Mr. Vice-President, thank you. This debate, unlike many that we have had in this Chamber, has been characterized, by and large, by a spirit—I cannot say compromise—that we are all in the middle of a problem which we have to fix, with one or two notable exceptions, but I must say at the outset that these are matters that I will not speak to.

Mr. Vice-President, I will not speak to Sen. Mark's comments with respect to the cocaine in Sen. Baksh's water tanks; I will not speak in relation to "mauvais langue" about corporal this or corporal that. [*Desk thumping*] Mr. Vice-President, I consider those things to be bacchanal and really out of place in a debate which is designed to treat with a serious problem which is confronting the country. All that I would say, with respect to Sen. Mark, is that Prof. John Spence, a former Senator, in an article written in the *Express* newspapers said that criminals in this country did not begin to be criminals overnight. There was no sudden epiphany by which these persons realized that they should become criminals. So that the problem of crime is a problem which requires, as I said in the other place, the efforts of us all, regardless of where we may happen to sit and it requires the dedicated effort of us all to fix a system which is broken.

Now, of course, that is not an easy matter, but the job of the Government is not to speak and not to treat with the easy matters. The job of the Government is to tackle frontally the difficult matters of the day and to come up with solutions which are adequate to meeting those problems head on.

If Sen. Mark were on this side, he would not fix the system; and he would come here and talk about his "mauvais langue" every day—

**Sen. Mark:** You were never in this Parliament; you are new to the process.

**Sen. The Hon. J. Jeremie:** I am new to the process, I am virginal.

**Sen. Mark:** You are a virgin. You do not know about this thing.

**Sen. The Hon. J. Jeremie:** Mr. Vice-President, through you, may I continue?

**Sen. Dr. Saith:** You fixed the problem by losing the election.

**Sen. Mark:** I take strong objection to that. No, you stole the election by using the Jamaat. [*Interruption*]

**Sen. The Hon. J. Jeremie:** Mr. Vice-President, may I speak to you? I am hearing voices and I am not able to discern what they are saying.

**Sen. Mark:** Virgins must be allowed to speak.

**Sen. The Hon. J. Jeremie:** He would not speak about the criminals in his midst.

**Sen. Mark:** Who is that?

**Sen. The Hon. J. Jeremie:** That is all I say on that matter.

**Sen. Mark:** You have plenty criminals among you boy. The PNM is the one—

**Sen. The Hon. J. Jeremie:** There are persons in this society who believe that they themselves are above the processes of the law, but once the rule of law breaks down, discipline at all levels of the society is compromised. [*Desk thumping*] Sen. Prof. Deosaran said to "fix me first". That is what you deal with first.

Mr. Vice-President, the contributions of Sen. Seetahal and Sen. Montano pointed out certain laudable difficulties in the Bill and those suggestions are designed to improve the criminal justice system in this country. By definition, they should have a positive effect. I propose to speak to them in the committee stage when we discuss them there. It is wrong to say that the legislation that is before us is the end of a journey. It was not presented as such.

When the hon. Minister of National Security and I talked in the other place, we talked in the context of a series of measures which were designed on the legislative side, to bring into focus certain of the difficulties which lie in the administration of the justice system. What we are about today is fixing those difficulties which are present in the system of the administration of justice. It is not the end of the process; it is merely the beginning of the process. The items which follow on the Government's legislative agenda are designed to speak, one by one, to some of those difficulties.

Mr. Vice-President, I should add at this point, that the Ministry of the Attorney General is aware that the Judiciary is an independent arm of the State and we have set up an ongoing consultancy to keep under review the laws which apply to the administration of justice. That has been done in full consultation with the Hon. Chief Justice. So, the committee is working and it is my expectation that the laws would be kept under review, so that our approach would be proactive in the future rather than reactive.

Mr. Vice-President, if I can speak to the contribution of Sen. Seetahal, in particular the proposed section 63B(5) and 63C(2)(b). This is a concern which was echoed by Sen. Montano. His concern really dealt with the problem of cross-examination of witnesses who had submitted written statements. Now, if you look at the proposed section it provides as follows:

Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section, part (a) says that the party may call that person to give evidence and the court may of its own motion, or on the application of any party to the proceedings, require that any person attend before the court and give evidence.

**5.45 p.m.**

We submit—and this is subject to discussion at the committee stage—that this allows a person who has given a written statement to be cross-examined. However, if this is not clear enough we could delete the proposed section 63A(5) and substitute a proposed section which I shall give in committee stage. In respect of the deletion of the proposed section 63C(4), I agree that there is no compelling reason to keep that subclause. In respect of the Criminal Procedure (Amdt.) Bill, the relevant clause, that is 37A, applies to both High Court trials and to a preliminary enquiry. So that the answer to the question is no. The Criminal Procedure Act in this respect applies only to High Court matters.

The fourth point which was raised in respect of clause 4, which inserted section 42A, we support the need for specimen directions to the jury, but we agree that this is a matter for some practice directions of the Court. I am in touch on a regular basis with the Hon. Chief Justice and I shall communicate that concern to him. He is very receptive to these ideas, because he recognizes—as I said in my opening—that the Magistrates' Court and the court system in general is really overwhelmed.

In respect of allowing statements of witnesses who are fearful to attend court, to be admitted in respect of summary and indictable offences, I would like to suggest that perhaps the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill be amended to include the amendment in relation to indictable matters. That is as much as I would speak to in relation to that, because most of Sen. Seetahal's concerns were echoed in Sen. Robin Montano's concerns.

Now there is just one other point which I have been challenged to speak to, and although I do not hear crosstalk, I believe that that might have been the subject of some of the crosstalk in relation to criminals, terrorists, and so forth.

The point which I made before I am prepared to repeat again, and that is, that the Government of Trinidad and Tobago faces a terrorist threat, however calibrated that might be. The Government gives the citizens the assurance this evening, and I thought I had done so before—It is not my assurance, it is the assurance of the Government, led by the Prime Minister of Trinidad and Tobago, that terrorism is an evil, and that for too long persons have masqueraded as freedom fighters to escape the reach of the criminal law. There are options at the disposal of the State. I say no more at this time, except to say that the Government shall utilize the measures which are at its disposal.

Mr. Vice-President, thugs, criminals and terrorists shall not be allowed to hide in this country. [*Noises from the Opposition Bench*] Every rope—

**Sen. Mark:** He said every rope has an end, Sir.

**Sen. Dr. Kernahan:** Fighting words, boy.

**Sen. Mark:** Fighting words, man.

**Sen. The Hon. J. Jeremie:** Thank you, Sen. Mark. Every rope has an end, and theirs is at an end.

Thank you. [*Desk thumping*] [*Crosstalk*]

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

*Clause 1.*

*Question proposed*, That clause 1 stand part of the Bill.

**Sen. Seetahal:** I suppose we are going to change No. 2 in clause 1, it is not No. 2, Summary Courts (Amdt.) (No. 2) Act.

**Sen. Mark:** Which one are we looking at, Mr. Chairman?

**Mr. Chairman:** Summary Courts (Amdt.) (No. 2) Bill.

**Sen. Seetahal:** Are we doing the Summary Courts Bill and are we doing clause 1? I am just saying that I am assuming that they are going to change it to name it Summary Courts (No. 1) of 2005, that is all I am assuming.

**Sen. Jeremie:** It will still carry the name because it was laid in 2004.

**Sen. Seetahal:** No, I think if the year has passed it matters. That is why I am making sure that there is no No. 1.

**Sen. Jeremie:** Thank you very much. I remember on my very first day here, Sen. Mark pointed out, erroneously, to me that the date of the Mediation Act and the Family Proceedings Act were incorrect, so I am very reluctant to change it based on his advice. [*Crosstalk*]

**Sen. Mark:** I misled you, AG?

**Sen. Jeremie:** Yes, you did.

**Sen. Mark:** I want to humbly apologize, it was not intentional.

**Sen. R. Montano:** Now that we got rid of the back and forth, is not Sen. Seetahal correct? Should it not be Summary Courts (Amdt.) (No. 1) Act, 2005?

**Sen. Seetahal:** No, you do not put No. 1

**Sen. Jeremie:** Not No. 1. It would be Summary Courts (Amdt.) Act, 2005.

**Sen. Seetahal:** And if there is a 2, then you put No. 2.

*Question put and agreed to.*

**Sen. Seetahal:** As amended. Summary Courts (Amdt.) Act, 2005, instead of No. 2 of 2004.

**Sen. Jeremie:** I am told by the Clerk that it would be treated as automatic, a typo, so it would not have to go back downstairs.

**Sen. R. Montano:** It is still going to have to go back downstairs, so why we do not, out of an abundance of caution, just do it?

**Sen. Jeremie:** Let us make the change but even the Law Reform Commission has power to make—

**Sen. R. Montano:** Let us not waste time, let us move on now.

*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

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

**Sen. R. Montano:** I suppose we are looking at the whole of clause 2.

**Sen. Jeremie:** Yes.

**Sen. Seetahal:** Could we start at 63A and then move on to 63B?

**Sen. Jeremie:** Sure.

**Sen. R. Montano:** What are we looking at? 63A?

**Sen. Jeremie:** Yes.

**Sen. R. Montano:** Mr. Attorney General, I heard what you said about the question of cross-examination, but with respect, I also tend to go on the side of Sen. Seetahal, where she said: "Look, let us make it absolutely clear"—I am looking at 63A(5)(a) and (b) on page 6. With respect to what you have said in your contribution about the Court may of its own motion, and so on. Oh, yes, I see what you are saying: The Court may of its own motion or on the application—

**Sen. Jeremie:** —of any party to the proceedings require that person to attend.

**Sen. Seetahal:** May I say something please? Usually when you say give evidence, you mean adduce evidence, which means in chief. My point is that this could be read as giving evidence in chief; that is what we normally mean. So cross-examination should be included there. That is the point I was making. I think that is what Sen. Robin Montano—

**Sen. R. Montano:** Yes, I got myself confused.

**Sen. Seetahal:** You see when you say, call that person to give evidence, it sounds as if it is in lieu of giving the written statement.

**Sen. R. Montano:** What we are trying to say, Mr. Attorney General, is just that we want to be absolutely clear, because my experience is that there can be huge arguments on this one point. Rather than have huge legal arguments, let us just be absolutely crystal clear.

**Sen. Jeremie:** I do not want to jeopardize the spirit of compromise, but the case law establishes that once you have a right to give evidence in chief, that the right to cross-examine is brought in.

**Sen. Seetahal:** That is the point though. What we are doing here, if I may say, is creating a provision to have a written statement given in evidence, which means no cross-examination. This is a written statement, you are putting it in there, all right. Now this subsection 5(a) suggests that in lieu of the written statement, the party may call that person to give evidence. What I am understanding the Attorney General to be saying is implicit in that, is that they may call them just to be cross-examined, but it does not say so, and in the context of this legislation being created to have written statements in lieu of both examination-in-chief and

cross-examination, you should make it clear. Because in the English legislation when they talk about evidence like this, they talk about written statement and they talk about cross-examination separately. That is the point.

**Sen. R. Montana:** Yes, that is the point, and that is the point I was trying to make too, when I was making my contribution.

**Sen. Jeremie:** Would this be a satisfactory form of words? In subsection (b):

> "The court may of its motion or on the application of any party to the proceedings require that person to attend before the Court to give evidence or to be cross-examined."

**Sen. R. Montano:** Yes, I think so.

**Sen. Seetahal:** Yes, I think so, but I also think that we should delete "and".

**Sen. R. Montano:** Not "and" give evidence.

**Sen. Seetahal:** It has to be "or".

**Sen. Jeremie:** I have struck that and put "to".

**Sen. R. Montano:** "To" give evidence.

**Sen. Seetahal:** No, no, no, no, no. At the end of (a) there is "and" which is conjunctive, so we should delete "and", which would mean "or", now. Also, as we are there, in the second line where you have the word "statements", it should be "statement". The last word, it is singular. I do not know if you all have changed it already. So we have "statement", we are deleting "and" and we are putting "or" cross-examine. Is that it?

**Sen. Prof. Ramchand:** Mr. Chairman, I just have a question, because I do not understand something. Subsection (5)(a), is it "in lieu of" the written or "in addition to"?

**Sen. Seetahal:** We will leave it open like that. I am saying it is usually read to mean "in lieu of". That is why we are putting "cross-examination", so that would clear up everything.

**Sen. R. Montano:** Yes, that was the point, and I think, AG, your amendment is well made, so that in the second to last line of subsection (b), it would read:

> "Before the Court to give evidence or be cross-examined."

Have you got that, Mr. Chairman?

**Mr. Chairman:** Yes.

**Sen. Prof. Ramchand:** “And to be cross-examined” will not be taken—

**Hon. Senators:** "or" to be cross-examined.

**Sen. Prof. Ramchand:**—"or to be cross-examined", would not mean cross examined only in relation to the oral, it would be in relation to the written, as well.

**Sen. Jeremie:** Well, yes.

**Sen. Seetahal:** I do not understand what he is trying to say.

**Sen. R. Montano:** You see what is happening is that a written statement is being put into evidence—

**Sen. Prof. Ramchand:** So, I am called now to give oral evidence.

**Sen. R. Montano:** He can be called to give oral evidence or he can be called just to be cross-examined.

**Sen. Seetahal:** Which is oral evidence. No, what he means is that, he can be called to give evidence in chief or to be cross-examined. There is one thing before we go, just a little typo, I just want to get all of them out. Clause 63A (3), the first letter there, I am sure they would say it is just a punctuation. The word "the" begins with a capital. It is a new sentence.

**Hon. Senator:** Which one?

**Sen. Seetahal:** Section 63A (3), at page 4.

**Sen. Jeremie:** I am told that they picked it up. It is a typo.

**Sen. Seetahal:** In case they did not, we have to make sure, because too often we have seen these things.

**Sen. Jeremie:** Thank you. As you refer us back, without confusing the issue, as we are on clause 2, section 63A(3).

**Sen. Seetahal:** That is a new one?

**Sen. Jeremie:** This is the proposed amendment.

**Sen. Seetahal:** Could I say I do not agree with it upfront?

**Sen. Jeremie:** You want us to take it out?

**Sen. Seetahal:** What I am saying is, I do not understand what the purpose of this new section is. What you are saying is, in the proposed amendment on page 5, it would come after (e), and it is supposed to read:

"Subsection (3)(d) and (e) shall not apply where the parties agree before or during the hearing that the statement shall be so tendered."

Now subsection (d) reads:

"before the statement is tendered a copy of the statement is given, by or on behalf to each party..."

I do not understand why that would not apply if the parties agree that the statement should be tendered. Because how could you agree if you do not have it.

**Sen. Jeremie:** I am told that we made this amendment on the motion of Miss Lucky downstairs, and it was not in the original draft. We did not think that it—

**Hon. Senator:** Which amendment is that?

**Sen. Seetahal:** Your amendment that comes today?

**Sen. Jeremie:** Yes, this is the proposed amendment. She suggested three amendments, two of which I took on board right away, and one which I promised to think about. So this is the one which I promised to think about.

**Sen. Seetahal:** But logically, it does not make sense, because (3)(d) is talking about before the statement being tendered to give a copy, and Miss Lucky's proposal is that, that giving a copy should not apply where the parties agree that a statement should be tendered. So I am saying the two things do not make—I do not want to say make sense—but, it does not make sense.

**Sen. Jeremie:** She wanted to bring the proviso in—[*Interruption*] I would be happy to do that, but I would have to do some explanation.

**Sen. Seetahal:** I do not understand what she was trying to say, because what you had said—and I have a note here, AG, when you were making the proposal—is that this new proposed amendment had to do with the period of notice.

**Sen. Jeremie:** Yes, which is under subsection (e).

**Sen. Seetahal:** It refers to (e), but there is no period of notice in (d). So therefore this (d) part is possibly an error. Having established that (d) does not make sense; the other point about (e)—I do not understand here is, if you are going to say—

"subsection (3)(e) shall not apply where the parties agree…"

What you really want to say is the notice requirement in subsection (e), because subsection (e)—I do not know if the other Members are following what I am saying here—

**Sen. R. Montano:** Could I just interrupt you here for a moment? The fact of the matter is that, just because the law requires you to do something or whatever, once you waive your right, it is waived. So that if I have a right to seven days notice, I can take the point and say no, now you must give me my seven days notice. But if I am agreeing with the statement, then I do not have to take my seven days notice. With respect, I am with Sen. Seetahal, I do not think—

**Sen. Jeremie:** So we would strike the proposed amendment.

**Sen. R. Montano:** Yes.

**Sen. Seetahal:** I was trying to go through it slowly but Sen. Robin Montano went through it; thank goodness. [*Crosstalk*]

**Hon. Senators:** We have not finished as yet.

**Sen. R. Montano:** We were going through 63A. Are we finished with 63A, AG?

**Mr. Chairman:** We had 63A and B.

**Hon. Senators:** Now we are going to 63B.

**Sen. R. Montano:** Before we go on, we have nothing further on 63A, do you AG?

**Sen. Jeremie:** No.

**Sen. R. Montano:** So we are doing 63B now?

**Sen. Jeremie:** Yes, according to the advice of the Chairman.

**Sen. R. Montano:** I have nothing on 63B.

**Sen. Seetahal:** I have nothing on 63B. So we are going to 63C? I had suggested the deletion of section (4), and the Attorney General had agreed.

**Sen. Jeremie:** Where are we?

**Sen. Seetahal:** New section 63C. [*Crosstalk*]

**Sen. R. Montano:** Shall we finish this? On 63C, you know that I have something on 63C(2)(c), the body corporate business. Page 8, 63(2)(c). This is

the famous "Howard Chin Lee" clause. [*Crosstalk*] [*Laughter*] Okay, I am teasing, just for the record, I am teasing.

**Sen. Jeremie:** Did I agree to it? In any event I meant to agree to it.

**Sen. R. Montano:** Basically, you said yes.

**Sen. Seetahal:** But you did not say, what.

**Sen. Jeremie:** To take out "clerk".

**Sen. R. Montano:** What I wanted to suggest was "a director or secretary or chief executive officer".

**Sen. Jeremie:** A director or secretary here means what?

**Sen. R. Montano:** A director, corporate secretary or chief executive officer.

**Sen. Seetahal:** What would you change? Director or Manager?

**Sen. R. Montano:** No I would take out "or manager". A "manager" again, runs into the Howard Chin Lee syndrome. [*Crosstalk*]

**Sen. Seetahal:** Should you not put "chief executive officer" before you put "corporate secretary", in terms of protocol?

**Sen. Jeremie:** You must by law, have a corporate secretary.

**6.15 p.m.**

**Sen. R. Montano:** Would it be "a director or a chief executive officer, or do you just want to make it "a director or corporate secretary"?

**Sen. Dr. Saith:** I am quite happy with that.

**Sen. Seetahal:** What about the "chief executive officer"?

**Sen. Prof. Ramchand:** The Attorney General, or somebody proposed the phrase "as directed in writing by the board".

**Sen. R. Montano:** I proposed it. Mr. Attorney General, what about "director, corporate secretary or such other persons as may be authorized in writing by the board of directors"?

**Sen. Seetahal:** Hold on a minute, "authorized in writing" would only apply to the other person, otherwise you will never get any admissions from a company, they will take a year and they will need to have a company meeting. They will have it and it will delay matters.

**Sen. Jeremie:** By law, under the Companies Act, you must have at least a corporate secretary. Let us go with that.

**Sen. Seetahal:** Let us go with corporate secretary. That is enough?

**Sen. Jeremie:** Let us go with "director or corporate secretary".

**Sen. Seetahal:** I am happy with that "corporate secretary".

**Hon. Senator:** This should be Sadiq Baksh's clause.

**Sen. Seetahal:** So, "director or corporate secretary".

**Hon. Senator:** Everybody corporate.

**Sen. Seetahal:** We want to move things along; we do not want to delay it. [*Crosstalk*]

**Sen. R. Montano:** No. All that comes up—Mr. Chairman, in other words, the amendment would be in the fourth line from the bottom, after the words "signed by a director or, you take everything else out and insert "corporate secretary".

**Sen. Jeremie:**—"of the body corporate" [*Inaudible*]

**Sen. R. Montano:** "Corporate secretary of the body corporate;" [*Inaudible*]

Did we delete in subsection (4) "an admission under this section", Mr. Attorney General? This is what Sen. Seetahal wanted, and then you can read subsection (2). Is clause 63C(4) deleted, Mr. Attorney General?

**Sen. Jeremie:** We have no objections to taking out 63C(4).

**Sen. Prof. Ramchand:** Mr. Chairman, I have a question. Going back to the refusal of the amendment (3)(a), et cetera, I have looked over that and I am trying to understand why that amendment might have been proposed. It seems to me that what we have agreed to stay with means that you have to wait seven days to see if the attorneys would—[*Interruption*]

**Sen. Seetahal:** No. What Sen. Montano explained, was that "parties could agree to go outside" and this is the norm, and this is what this section was saying, anyway.

**Mr. Chairman:** Hon. Members, we have to suspend the proceedings just for the Procedural Motion.

*Senate resumed*.

**PROCEDURAL MOTION**

**Acting Prime Minister and the Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Mr. Vice-President, I beg to move that the Senate continue sitting, I hope for not very long, until the completion of the debate on the two Bills.

*Question put and agreed to.*

**SUMMARY COURTS (AMDT.) (NO. 2) BILL**

*Senate in committee*.

**Sen. R. Montano:** Mr. Attorney General, just to deal with what Sen. Prof. Ramchand was saying. As I explained—[*Interruption*] "Hello, anybody home"—what happens is, that once two parties agree; I can always agree to shorten my notice, so that the amendment is unnecessary. I am not going to make an agreement like that. Yes, Attorney General, is clause 63(C)(4) deleted?

**Sen. Jeremie:** Yes.

**Sen. R. Montano:** Mr. Chairman, I invite you to move. [*Laughter*]

**Mr. Chairman:** I propose that clause 2 be amended in 63(A)(5) to read:

"Notwithstanding that a written st

atement made by any person may be admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statement was served…"

**Sen. R. Montano:** Statement, singular.

**Mr. Chairman:** Yes. That is what I said.

**Sen. R. Montano:** Oh, sorry.

**Mr. Chairman:**—"may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings require that person to attend before the court to give evidence or to be cross-examined."

Section 63C(2)(c):

"where made in writing by an individual, an admission under this section:

(a) may be made before, or at the proceedings;

(b) where made otherwise than in the court, shall be in writing; and

(c) where made in writing by an individual shall purport to be signed by the person making it, and if so made by a body corporate, shall purport to be signed by a director or corporate secretary of the body corporate;"

And in clause 63(D) subsection (4) is deleted.

*Question put and agreed to*.

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

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

*Senate resumed*.

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

**CRIMINAL PROCEDURE (AMDT.) BILL**

*Order for second reading read*.

**The Attorney General (Sen. The Hon. John Jeremie):** Mr. Vice-President, I beg to move:

That the Bill to amend the Criminal Procedure Act, Chap. 12:02, be now read a second time.

*Order for second reading read*.

*Question proposed*.

*Question put and agreed to*.

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate*.

*Senate in committee*.

*Clause 1*.

*Question proposed*, That clause 1 stand part of the Bill.

**Sen. R. Montano:** Mr. Chairman, I have a little change before it goes to 2005.

**Sen. Jeremie:** Is it typographical?

**Sen. R. Montano:** Yes.

**Sen. Jeremie:** Okay.
*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

*Clause 2 ordered to stand part of the Bill.*

*Clause 3.*

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

**Sen. R. Montano:** Okay, the "Howard Chin Lee clause".

**Sen. Jeremie:** Agreed.

**Sen. R. Montano:** It is the same as "body corporate" the same line as before.

**Sen. Jeremie:** The same as "by director or corporate secretary".

**Sen. Seetahal:** And the same deletion of (4).

**Mr. Chairman:** Hon. Senators, the question is that clause 3 be amended in subsection (2)(c) to read:

> "if made in writing by an individual shall, purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or corporate secretary of the body corporate;"

And subsection (4) be deleted.

*Question put and agreed to.*

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

*Clause 4 ordered to stand part of the Bill.*

*New clause 5.*

**Sen. Jeremie:** Mr. Chairman, I beg to move that a new clause 5 be inserted as circulated in the draft as follows:

"Insert after clause 4 the following new clause:

5. Section 50 of the Act is amended as follows:

(a) by renumbering section 50 as section 50(1);

(b) in the renumbered section 50(1), by deleting the words 'and, subject to the provisions of the Corporal Punishment (Offenders Not Over Sixteen) Act and the Corporal

(c) Punishment (Offenders Over Sixteen) Act, to undergo corporal punishment";

(d) by inserting after the renumbered section 50(1) the following new subsection:

(2) For the avoidance of doubt and without prejudice to the offences listed in the Schedule to the Corporal Punishment (Offenders Over Eighteen) Act, a person convicted under subsection (1), upon whom a sentence of corporal punishment is imposed, shall undergo that punishment in accordance with the requirements of the Corporal Punishment (Offenders Over Eighteen) Act."."

*New clause 5 read a first time*.

*Question put and agreed* to.

*Question proposed,* That the new clause be read a second time.

**Sen. Seetahal:** Did we make amendments; I have amendments to propose in respect of the new clause. Shall I do it now?

**Sen. Jeremie:** Sure.

**Sen. Seetahal:** It is clear that the "Corporate Punishment (Offenders Over Sixteen), Act, if you look at the next page you will see "Offenders Over Eighteen and that is the name of the Act, so you have an inconsistence there.

**Sen. Jeremie:** Could you repeat that please?

**Sen. Seetahal:** Okay, The substantive section 5(b) is basically providing that—under the old law persons who were convicted of a second arrestable offence would, under the old law, be supposed to be liable to corporal punishment. But, the judges have been interpreting that to mean that it was only for the offences to which they were already liable, such as rape and so on. This amendment is to make it clear that once you are sentenced to a second serious offence, you would be liable to get corporal punishment, which was always the intention. I am saying, in the proposed amendments, there are a couple of errors, and I will go straight to them. The fourth line of (b) "the Corporal Punishment (Offenders Over Sixteen) Act". That does not exist any longer. That Act was abolished.

**Sen. Jeremie:** If you look at the parent Act, that is section 50, which unfortunately has not been changed.

**Sen. Seetahal:** All right, so what you are deleting are the old provisions. But my understanding was that since it exists now, the amendments would have incorporated the current amendments, if you see what I am saying.

**Sen. Jeremie:** There was no amendment to section 50 of the Criminal Procedure Act.

**Sen. Seetahal:** Yes, when the Children Act amendment was passed, I think it was 66 of 2000, it amended this, to delete the words. But I think maybe it is out of an abundance of caution you are doing it. Is that what it is?

**Sen. Jeremie:** It amended the parent Act, it did not amend the Criminal Procedure Act and my understanding is that—

**Sen. Seetahal:** If you want to do it out of an abundance of caution. Okay—

But, my understanding is that the Corporal Punishment (Offenders Under Sixteen) Act no longer exists, and it no longer existed since that one was proclaimed, so I thought section 50 was suitably amended. But if what the Attorney General is saying is to be totally clear, you want to say that you are deleting this, okay.

Moving along, now to page 2, which you have, "for the avoidance of doubt and without prejudice to the offences listed…" you have here "a person convicted under subsection (1), upon whom a sentence of corporal punishment is imposed, shall undergo that punishment in accordance…" The problem here is, this as drafted, does not give the court power to sentence a person to corporal punishment for the second offence. It says, it supposes that you would already legitimately have been sentenced to corporal punishment.

What you want to do, is create a provision to say that a person who has a second serious offence, should be also liable to corporal punishment, despite the provisions of the Corporal Punishment Act. So, my proposed amendment is this:

Delete the words, "for the avoidance of doubt and", and start with "without prejudice to the offences listed in the Schedule to the Corporal Punishment (Offenders…) a person convicted under subsection (1)" and delete the rest of the words, "until that", the next three lines and it should now read, "a person convicted under subsection (1) may also be sentenced to undergo corporal punishment in accordance with the requirements of the Corporal Punishment (Offenders Over Eighteen) Act." Should I read it again?

**Sen. Jeremie:** May also be—

**Sen. Seetahal:** —"sentenced to undergo corporal punishment". The last five lines of your amendment remain, "in accordance with the requirements of the Corporal Punishment…".

**Sen. Jeremie:** Agreed.

**Sen. Seetahal:** Because, what you have right now does not convey the power to the courts, and currently the courts are thinking that, they can only exercise corporal punishment for the existing offence. Recently, we had persons who had three sentences, two sentences of incest—and incest is not included in the list of offences—and the court said that despite the two sentences, the first incest following upon a rape, that this provision could not kick in, because it applied only to offences listed. It defeated the purpose of the law. If we put, "without prejudice to the offences listed" this is the amendment, in the schedule, "to the Corporal Punishment (Offenders Over Eighteen) Act, a person convicted under subsection (1) may also be sentenced to corporal punishment in accordance with the requirements of the Corporal Punishment (Offenders Over Eighteen) Act".

**Sen. Jeremie:** Sounds good. Agreed.

**Sen. Seetahal.** I am not disagreeing morally or otherwise, I am just talking about the law.

**Sen. Jeremie:** Can we deal with Corporal Punishment Act, now?

**Sen. Seetahal:** They are giving you corporal punishment for rape and wounding, but not for incest. "You ain't see something wrong with the law"! [*Interruption*]

**Mr. Chairman:** Hon. Senators, the question is that new clause 5 be amended in subsection (2) to read:

> "Without prejudice to the offences listed in the schedule to the Corporal Punishment (Offenders Over Eighteen) Act, a person convicted under subsection (1) may also be sentenced to undergo corporal punishment in accordance with the requirements of the Corporal Punishment (Offenders Over Eighteen) Act."

**Sen. Seetahal:** Just one last question, through you, the drafter can tell us. Is there any likelihood that the words "without prejudice" would create conflict? Should we put "in addition to" if we want to make it abundantly clear, if you all want to ensure that corporal punishment is inflicted?

**Sen. Jeremie:** That is all right.

*Question put and agreed to*.

*Question proposed*, That the new clause 5, as amended, be added to the Bill.

*Question put and agreed to*.

*New clause 5 added to the Bill*.

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

*Senate resumed*.

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

**ADJOURNMENT**

**The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams):** Mr. Vice-President, I beg to move that the Senate do now adjourn until Tuesday, July 12, 2005 at 1.30 p.m. Let me advise that according to today's Order Paper "Bills Second Reading" we intend to do Bills Nos. 3 and 4, and I wish to advise the Senate that we would wish to complete both Bills next Tuesday evening.

## Chatham/Cap-de-Ville (Aluminium Smelter Plant)

**Sen. Prof. Kenneth Ramchand:** Thank you, Mr. Vice-President. The matter I wish to raise is related to the proposed aluminum smelter in Cap-de-Ville/Chatham, involving a multinational corporation ALCOA Inc and the Government of Trinidad and Tobago.

The smelter is the magnet enterprise in a proposed industrial estate to be set up on 2,000 acres or three square miles of agricultural land which shall be cleared of all plant and trees and all birds, insects and animal life. Over 100 families will be displaced and private property compulsorily acquired. We are talking about a huge chunk of prime real estate and there can be no doubt that the effects on the environment, on economic patterns, lifestyle and human settlement will spread throughout the southwest peninsula.

Mr. Vice-President, the price of progress is high, and we can only agree to pay it if we are careful about the kind of progress we invite. If we measure the immediate benefits against the social, cultural, environmental and human losses and if we hold on certain truths, "what does it profit a man to gain the whole world and lose his own soul?"

**6.45 p.m.**

Do we need an aluminium smelter so badly that we are willing to bear the immediate and long-term losses? ALCOA Inc is the world's largest aluminium producer; so we have to understand the nature of the corporate octopus we are tangling with. ALCOA Inc is one of the worst polluters on the planet. It has a record of blatantly violating and evading environmental laws and, when convicted, managing to be fined paltry sums.

ALCOA wields great influence at the Federal, State and local levels in the United States and they have the support of politicians in power. It also has a record of finding ways of getting foreign governments to do what it wants. They did it in Iceland, whose government is notorious for their poor environmental record and unconstitutional behaviour. After 20 years of not building new smelters anywhere in the world, ALCOA zeroed in on Iceland in 2002, with its unconstitutionally-minded government and a pariah among Nordic nations for its poor environmental record. And now, as the tourist brochures advise, they have discovered Trinidad and Tobago.

Mr. Vice-President, beware. What is happening in the Southwest Peninsula and threatened in other parts of the island, is not development. It is the opposite of development. Development is not the alienation of agricultural land. Development is not the arbitrary imposition of industrial projects that have no organic relationship with the traditional skills and natural products of a region. The usurpation of agricultural land threatens the food supply. Every year we import more food and every year the price goes up. Every year our capacity to grow food atrophies. Every year the land available for growing food is taken away and used for something else.

Mr. Vice-President, we have to grow food. We must not assassinate agriculture. I will not call you a prophet of doom if you were to pronounce that when fossil fuels run out, many Trinidadians will starve. We face in the Southwest Peninsula, the imminent laying low of agriculture and fishing, the dislocation of families and villages and the visionless breaking up of communities and community spirit established over a long period of living together on land and sea.

We are witnessing the conversion of hundreds of independent folk, with a sense of wholeness and belonging, into faceless factory workers and slaves. Would you believe it, the rough beast slouching towards Jerusalem and nobody asking the people of the peninsula if they wanted this aluminium smelter in their place? When they band together and take their case to the nation, encamping in

the front yard of the Parliament in Woodford Square, there is not the slightest pause in the ravishing strides of this flaming dragon.

**Hon. Senators:** Ooh!

**Sen. Prof. K. Ramchand:** Like it? [*Laughter*]

**Hon. Senators:** Yes. [*Desk thumping*]

**Sen. Prof. K. Ramchand:** There is a further consideration. This aluminium smelter project is yet another indicator of our country's mindless abuse of the environment. We rank 139 out of 146 as regards managing and sustaining the environment. We rank 146 out of 146 with regard to the percentage of land suffering manmade impact. Although we get top marks for biodiversity, we "come" last when you consider that we have more threatened species of bird, mammals, amphibians and eco-regions than any other country in the world. It is an abysmal record. [*Crosstalk*]

The Southwest Peninsula that we are about to desecrate is an outstanding illustration of the biodiversity of Trinidad and Tobago. It is home to a number of beautiful and fascinating wetlands. The vegetation is rich and varied, with red, white, black and buttoned mangroves, reed marshes, swamp forests, literal woodland, seasonal evergreen forests and herbaceous swamps. Startling varieties of birds, insects, reptiles and butterflies live in this undiscovered paradise. This paradise is what we are about to lose to the soulless monster of ALCOA Inc and industrialization. [*Desk thumping*]

The coconut industry of the Southwest Peninsula is collapsing. The fishing industry has declined. The sea is polluted. Other agricultural activity has fallen off. If the Government wishes to develop the different regions of our country in appropriate and sustainable ways, it should turn its attention to the revival of the coconut industry, the rehabilitation of fishing and industrial projects related to these pursuits and the development of this beautiful part of the island as an ecotourism wonderland.

We are whoring after a shiny El Dorado made up of the crumbs from the plates of the conquistadors, but the gold we seek is all around us. The gold is our environment; ours to cherish and to nurture for ourselves, our children and our children's children.

Mr. Vice-President, I come now to the most saddening chapter of this story: the subversion of our democracy; the abuse of law and the contempt for Parliament involved in the proposed aluminium smelter project. Firstly, the

National Development Plan, which was approved by Parliament in 1984, is our only legal blueprint for planning and development of land. [*Desk thumping*] The areas being captured for the aluminium plant are reserved by the National Development Plan for intensive and moderately intensive agriculture.

The provisions of this plan may not be altered, except by the submission of revised plans for the approval of Parliament. No plans for a smelter, or for that matter a sporting complex at Tarouba, have been brought for the approval of Parliament, so we are dealing with a blatant disregard of the National Development Plan and a contempt of Parliament; and it does not stop there. [*Desk thumping*]

To carry out the smelter project at Chatham, certain rules, measures and procedures developed by the Environmental Management Authority (EMA) have to be strictly followed. In the case of the Chatham/Cap-de-Ville industrial project, the first stage is to obtain a certificate of environmental clearance (CEC) for the establishment of an industrial estate. There are, at least, seven distinct steps to be followed; at least three of them involving public consultation and intervention before a CEC can be granted. When these seven steps are followed—and they have not been—a CEC for the establishment of an industrial estate would be granted.

In the second stage a tenant of the industrial estate or industrial mall, call it what you like, a tenant like ALCOA, who wishes to set up an aluminium smelter, must obtain a CEC for the particular project it wishes to undertake and that proposal has to be taken through the same seven steps, with the public having the same right for consultation and intervention at three points. Built into all of this, Madam President—sorry, Mr. Vice-President, I am accustomed to a pretty face.

**Sen. Mark:** No problem.

**Sen. Prof. K. Ramchand:** Built into this is a wise determination that the citizenry shall have sufficient time and opportunity to express their feelings and their views; that the EMA will have the power to protect and conserve; that the process shall not be fast-tracked and the country shall not be bulldozed into any project.

Mr. Vice-President, none of the procedures with respect to the National Development Plan have been followed. None of the measures with respect to the EMA have been complied with in the current arrangements to facilitate the establishment of the aluminium smelter. My particular concerns for all forms of life in the Southwest Peninsula should be apparent enough, but I have to be affirmed. One of the purposes of this Motion is to alert people and the Parliament

to the contempt with which the laws of the country are being treated by an elected Government—[*Desk thumping*]—and to highlight the disrespect of this Government for the people of Trinidad and Tobago who elected it and for the Parliament of the Republic of Trinidad and Tobago, whose function it is to scrutinize, validate and sanctify the actions carried out by Members of Parliament, in fulfilment of the sacred trust they undertook when they swore to serve the people of Trinidad and Tobago and to uphold the Constitution and the law.

Thank you.

**Hon. Senator:** Move over Wade; move over. [*Desk thumping*]

**Sen. Abdul-Hamid:** I did not know Wade could write so.

**The Minister of Energy and Energy Industries (Hon. Eric Williams):** Mr. Vice-President, oh the stories I heard from English students at the University of the West Indies. [*Laughter*] Well founded, and he knows exactly who I mean.

The proposed aluminium smelter in Cap-de-Ville clearly has generated a fair degree of national debate. I am sure that Members of this honourable Senate would agree that debate is, in fact, good, especially when it is predicated on fact, sound analyses and reasoning. However, when I survey the records of the debate which, hitherto, has been represented in the daily newspapers—and I only want to speak to the daily newspapers and not to the hon. Senator's presentation—there has been a fair amount of misinformation. [*Interruption*] [*Laughter*]

**Sen. Seepersad-Bachan:** You have to speak to the hon. Senator; you are responding to him. [*Laughter*] [*Crosstalk*]

**Hon. E. Williams:** I will not characterize the Senator's presentation in this way; I am speaking to other parts of the debate that I have heard, which seem to have been characterized by misinformation, suspect reasoning and emotionalism, which seems to be at the forefront of the discussion.

I will allude to some of them. On Thursday, June 09, 2005 in the *Trinidad Express*, reporting on a press conference held by a group of environmentalists, it quoted the principals of the meeting as having said that research has shown that smelters leave a trail of disasters wherever they are set up. With respect, that was a rather reckless statement. That same report noted an environmentalist as having said that the people of Chatham were being deceived by politicians who wanted to seize their land and hand it over to a commercial company for the construction of an aluminium smelter.

I assure the citizenry of this country and hon. Members of this Chamber, that the Government will under no circumstances place the lives and livelihood of our citizens at any such risk. Not only do we have a responsibility to all of us, but also to the future generations of this country, to ensure that any development undertaken is sustainable, both economically and environmentally. Indeed, to achieve sustainable development, one has to keep in balance economic, social and environmental considerations. We strive for sustainable development of our beloved Trinidad and Tobago. [*Desk thumping*]

My intention this evening is to set the record straight. I will first give an update on the progress of the project; then I will speak to a number of concerns raised in the public domain, namely concerns about preservation of the environment, the health of workers at the plant and of the people living in surrounding communities and anticipated social and economic displacement.

In May last year, the Aluminium Company of America (ALCOA) signed a memorandum of understanding (MOU) with a consortium comprising the National Energy Corporation (NEC) and Seeral, to conduct a feasibility study in the establishment of a 250,000 metric tons per year aluminium smelter at the Union Estate which, by the way, was an abandoned oilfield. The results of that study being favourable, ALCOA then proposed to the Government, and the Government accepted, to look into setting up a larger facility of 341,000 metric tons per year at a capital cost of US $4.054 billion, on their own.

Since the proposed initial site was too small for the newly configured project, the Government offered the Chatham/Cap-de-Ville site for the newly reconfigured ALCOA project. On January 11 of this year, ALCOA applied for a certificate of environmental clearance from the Environmental Management Authority, based on the new project specification. One should note that ALCOA applied for and received a CEC for the Union Estate project during the initial stages of that project's developmental life. Of course, the same procedure is going to be followed for this site.

In November last year, the company initiated the conduct of an environmental impact assessment (EIA) on the proposed smelter plant. Eco-Engineering, a local firm, is conducting the EIA. The National Energy Corporation, the arm of the State responsible for the development of this project, has also awarded a contract to the Institute of Marine Affairs to conduct an EIA for the development of Cap-de-Ville. The results of that assessment are expected in August. In March, the NEC also applied to the EMA for a certificate of environmental clearance to build a port facility in Cap-de-Ville in support of the smelter project.

Some of the other project details include the conduct of a feasibility study to determine the feasibility of a railway system from La Brea to Chatham as an alternative to a pier or port facility at the Chatham site, and tenders for this study were received this month, and also a land survey of the proposed site at Chatham. ALCOA has agreed to the following proposals of the Government: the initial facility to utilize 450 acres, with the rest of land providing a buffer between the plant and the surrounding community; investment in approximately 240,000 metric tons per year of intermediate products—that is to say, going beyond aluminium—here in Trinidad and Tobago, which will see an additional 50 jobs and then, of course, the other spin-off in the society; an assessment of an ALCOA powered power plant, so that we do not have to build the power plant that goes with it. We would have to work out the details of natural gas and so on.

Let us look at public concerns on plant emissions and its effect on workers. I have seen in the press claims that aluminium plants cause birth defects and other chronic illnesses in persons who work at such facilities and in persons who live in close proximity to such a plant. These claims are not founded in fact, but are based on old and, in some cases, faulty data, obsolete work practices and technology that is up to 100 years old. One such technology is known as the "Soderberg cell technology".

Today, state-of-the-art aluminium manufacturing technology aimed at preservation of the environment and the safety of workers, such as the one ALCOA proposes, is the norm. Older facilities did, indeed, have problems with emissions of fluorides, polyaromatic hydrocarbons, sulphur dioxide, carbon dioxide and polyfluorocarbons, a whole mix of chemicals, but this will not be the case with the proposed Chatham plant. The technology to be used will convert alumina or aluminium oxide into aluminium, based on an electrolytic reduction process, using a technology called the "pre-baked anode technology".

This technology, along with the work procedures at the plant, will ensure that more than 98 per cent of all fluoride emissions will be captured and recycled before they are released into the air. This is something that older smelters could not do. The technology provides for exhaust from the electrolytic pots to be captured and routed to gas treatment centres where a whole series of procedures are going to take place to recycle these gases. So the industry has learned about the emissions, indeed, from what were the first and second generation aluminium smelter plants built prior to 1975 and, therefore, today, the process plants are a lot cleaner.

Mr. Vice-President, having gone through some of the technical details, I wish to posit that in the same way a car designed in 1970 is less efficient than one designed in 2000, new technology has emerged in the aluminium industry to adequately deal with environmental concerns.

Let us look at the social and economic displacement issues. I have heard it said that many of the Chatham residents will have to be relocated as a result of the facility. I assure residents that it is still early days yet before any decision is taken in this regard, as the EIAs that I have already described have yet to be completed. As the Senator quite rightly pointed out, a very important part of the EIA process gives all citizens the right and opportunity to air their concerns. The EIA not only examines the environmental impact of such a facility, but also the social impact. An EIA will also take into consideration community agencies, including those responsible for health, safety, water, forestry, agriculture and fisheries.

Members of this honourable Senate, it is not industrialization at the expense of the environment, but industrialization in harmony with the environment, both social and physical.

As regards economic displacement, the expanded proposal at ALCOA calls for the creation of approximately 650 permanent jobs and as many as 2,000 jobs during the 36-month construction period. In addition, the production of raw aluminium presents significant opportunity for the establishment of spin-off industries that utilize aluminium as their input. Bearing in mind the unemployment levels in the area of the Southwest Peninsula, the whole Victoria/St. Patrick general area immediately surrounding the proposed smelter facilities, an employment boost such as this would, indeed, be welcomed.

In addition, the economic multiplier effect of the existence of a large industrial facility would do much to improve the quality of life of citizens in the area. We see process plants as nodes of both social and economic growth and development. Indeed, we intend to leverage the energy sector to cause growth of the non-energy sector. We see projects such as this and the spin-off effects in the society, as achieving some of these ends.

I think that a clear case has been made in defence of this proposed facility, albeit not with the same flair. [*Laughter*] To say that it will improve the area in which it is going to be constructed, is without doubt; however, I must also add that the Government will not be delinquent in ensuring that such a facility, when it is finally approved—if it is approved—[*Interruption*]

**Sen. Mark:** Good.

**Hon. E. Williams:**—all environmental regulations will be met.

Mr. Vice-President, Senators, thank you.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 7.11 p.m.*