SENATE

Tuesday, February 06, 2007

The Senate met at 1.30 p.m.

PRAYERS

[MADAM PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Madam President: Hon. Senators, I have granted leave of absence from today's sitting to Sen. The Hon. Conrad Enill who is out of the country

SENATOR'S APPOINTMENT

Madam President: Hon. Senators, I have received the following correspondence from His Excellency the President, Professor George Maxwell Richards, T.C., C.M.T., Ph.D.

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency, Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Conrad Enill is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a Member of the Senate, with effect from February 06th, 2007 and continuing during the absence from Trinidad and Tobago of the said Senator Conrad Enill.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 05th day of February, 2007."

OATH OF ALLEGIANCE

Senator J. Hackshaw-Marslin took and subscribed the Oath of Allegiance as required by law.

PARLIAMENT BUILDING
(APPOINTMENT OF A JOINT SELECT COMMITTEE)

Madam President: Hon. Senators, at a sitting of the Senate last Tuesday the following amended Motion was approved:

Be it resolved that this House appoint a Select Committee to assess the adequacy of the building that houses the Parliament of the Republic of Trinidad and Tobago with a view to planning for the long-term accommodation of Parliament and report its recommendations to this House within six months.

And now, in accordance with the provisions of Standing Order No. 64(1) and (2), I now appoint the following Senators to serve on this Select Committee.

Sen. The Hon. Danny Montano	Chairman
Sen. The Hon. Hazel Ann Marie Manning	Member
Sen. The Hon. Satish Ramroop	Member
Sen. Dr. Jennifer Kernahan	Member
Sen. Dr. Eastlyn Mc Kenzie	Member

QUESTIONS
(Length of time on Order Paper)

Madam President: Senators, while I am on my feet I want to refer to a matter which was raised concerning answers to questions being on the Order Paper for a length of time.

I want to tell you that over the last week we have checked with a number of Parliaments on this issue and I wish to reiterate what I have said on many occasions in this Senate before, and that is, the Presiding Officer cannot force a Minister to answer a question.

The Presiding Officer can cajole and even beg but the onus is on the Minister to answer the question. There is nothing in the Standing Orders that compels a Minister to answer, and I want to read a ruling which was given as far back as 1902 and which still stands relevant today.

In the Parliament of Australia, President Barker ruled on August 26, 1902 that there was no obligation on a Minister, as a Member to answer a question and in 1905 he ruled that it is a matter of policy whether the government will answer a question or not. There are no Standing Orders which can force a Minister or other Senator to answer a question.

Other Presidents have stated that answers are optional or discretionary; however, political reality dictates that Ministers must seek to demonstrate that they have a firm understanding and command of the matters for which they are responsible by answering questions in a competent manner. In party political terms it is important that a Minister performs well at question time.

Hon. Senators, we have checked with a number of Parliaments and this situation has not changed. Until the Standing Orders are changed to specify a definite time within which answers must be brought, the Presiding Officer can do no more than encourage Ministers to bring the answers as soon as they have the necessary information.

JOINT SELECT COMMITTEE REPORT (PART II) (Presentation)

Sen. Mary King: Madam President, I have the honour to lay on the Table the following report standing in my name:

The First Report of the Joint Select Committee of Parliament appointed to enquire into and report on Government Ministries (Part II) on the Statutory Authorities and State Enterprises falling under those Ministries.

ORAL ANSWERS TO QUESTIONS

Trinidad and Tobago Housing Development Corporation (HDC) (Details of)

19. Sen. Basharat Ali asked the hon. Minister of Housing:

A. Could the Minister advise whether the Trinidad and Tobago Housing Development Corporation is exempt from the Central Tenders Board Ordinance in accordance with section 29(1) of Act No. 24 of 2005?

B. If the answer is in the affirmative, have rules been laid in Parliament in accordance with section 29(4) of the said Act?

C. If the answer is in the affirmative, please advise the date on which they have been laid?

The Minister of Housing (Hon. Dr. Keith Rowley): Madam President, the answer to part A is yes, the Trinidad and Tobago Housing Development Corporation is exempt from the Central Tenders Board Ordinance in accordance with section 29(1) of Act No. 24 of 2005, which states:

"Subject to subsection (3), the Corporation in pursuance of its functions is exempt from the Central Tenders Board Ordinance."

With respect to part B, the rules have not been laid in Parliament in accordance with section 29(4) of Act No 24 of 2005. Steps are being taken to effect same. In the interim, the Corporation is following the procedure in accordance with section 29(3) of Act No. 24 of 2005 which states:

"Until the rules are made under subsection (2), the Corporation shall follow the procedure as detailed in the Central Tenders Board Ordinance."

Sen. Ali: Madam President, because the Housing Development Corporation is now subject to procedures detailed in the Central Tenders Board Ordinance, I wonder whether the hon. Minister can clarify or illustrate how in the selective tendering process for Federation Villas a developer, Building Concepts and Construction Limited of Jean Avenue, Diego Martin has been awarded this contract?

Hon. Dr. K. Rowley: Madam President, I would very happily answer the question if the Member wishes to file it as another question.

Madam President: Hon. Senator, it is really a new question, so if you wish to file it, the Minister is prepared to bring the answer.

Caribbean Airlines
(Consultants Contracted)

22. Sen. Wade Mark asked the hon. Minister in the Ministry of Finance:

With respect to the operations and functioning of Caribbean Airlines, could the Minister inform the Senate of:

(a) the number of consultants contracted to work with the Chief Executive Officer, Mr. Peter Davies;

(b) the names and qualifications of these consultants; and

(c) the terms and conditions of engagement and duration of their contracts?

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I believe this is among three out of about 25 questions that have been asked by the Senator on Caribbean Airlines and the Minister in the Ministry of Finance advises me that he needs two more weeks before he can provide answers to this and others.

Question, by leave, deferred.

Madam President: Thank you. You will notice that there are a number of new questions for written answers, so I will ask the relevant Ministers to please take note and ensure that we get the answers.

The following questions stood on the Order Paper in the name of Sen. Wade Mark:

BWIA's Prime Slot Time
(Evaluation Studies of)

23. A. Could the Minister in the Ministry of Finance inform this Senate if any valuation studies were done to determine the present day value of the former BWIA's prime slot times into Heathrow International Airport?

B. If the answer to (A) is in the affirmative, could the Minister provide the Senate with:

(i) the details of such evaluation studies;

(ii) the name of the firms or consultants which conducted these evaluations;

(iii) what was the cost of these evaluation studies?

Competitors in the Airline Industry
(Names of)

24. Could the hon. Minister in the Ministry of Finance inform this Senate of the names of all the competitors in the airline industry who were approached by the Board of Directors of the former BWIA to purchase the various slots owned and controlled at the time by BWIA?

Questions, by leave, deferred.

MISCELLANEOUS PROVISIONS
(MINIMUM AGE FOR ADMISSION TO EMPLOYMENT) BILL
House of Representatives Amendment

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Madam President, I beg to move,

That the House of Representatives amendments to the Miscellaneous Provisions (Minimum Age for Admission to Employment) Bill listed in the Appendix to the Supplemental Order Paper, be now considered.

Question proposed.

Question put and agreed to.

Clause 4(b).

House of Representatives amendment read as follows:

In the proposed section 91:

A. in line 7, delete the words "the same" and substitute the word "his".

B. insert the following new subsection:

"(3) In this section 'family' means parents, brothers, sisters, and other lineal antecedents and descendants."

Clause 4(c).

House of Representatives amendment read as follows:

In proposed section 92A(2), delete the word "An" and substitute the words "Subject to section 92B an".

Clause 4(g).

House of Representatives amendment read as follows:

In proposed section 96, insert the words "for which there is no penalty specified" after the word "offence".

Sen. Montano: Madam President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Just to explain very briefly what happened, in the other place when we were completing the debate we got some very useful inputs from Members who pointed out that we had one or two little anomalies.

In clause 4(b), where we were trying to restrict a child working for the same family, it was pointed out that the same family could be somebody else's family and not his and what was intended is that the word "family" be his family.

It was also felt that we should define what a family was and not include cousins, distant cousins and so forth, but identifying it as the parent, brothers, sisters and other lineal antecedents and descendants.

In clause 4(c), we removed the word "An" and substituted the words "Subject to section 92B an", because 92B gave an inspector the power of entry under certain circumstances. Section 92A did not provide for that, the inspector was able to demand information from a parent or an employer and it was felt that the same safeguard should be included, and that, of course, made sense and we readily agreed to it.

In clause 4(g), because of the penalty that was included there and hon. Senators would remember that in section 92(3) we had changed the penalty for not maintaining a register to be $2,500 fine plus six months imprisonment, and when we came to section 96 we did not change anything there so we had to limit it to exclude clause 92. So the words "for which there is no penalty specified" effectively excluded the penalty in section 92. So it really made much sense, and it cleaned up the Bill.

Thank you.

Question proposed.

Sen. Dr. Gopeesingh: Hon. Minister, could you explain the words "lineal antecedents and descendants" in terms of how far back just for a matter of clarification?

Sen. Montano: I do not think when we were discussing it there was any intention to limit it, however long someone might live he/she is still a member of that person's family and should be treated as such. So whether they are grandparents, great grandparents, great, great grandparents, or great, great grandson or whatever, we did not feel there was any need to restrict it. Lineal is lineal, family is family.

Question put and agreed to.

EVIDENCE (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie, S.C.): Madam President, I beg to move,

That a Bill to amend the Evidence Act, Chap. 7:02 be now read a second time.

Madam President, the Bill before this honourable Senate, the Evidence (Amdt.) Bill, 2007 is but one item of a series of measures which the Government has proposed and which are intended to reform the criminal justice system which we have brought before Parliament in our attempt to deal with the spate of criminal activity which has plagued this country over the last 10 years.

This Government recognizes its duty to ensure the safety and welfare of all its citizens. In doing that, the Government has taken a multipronged approach. Firstly, it has put in place legislative machinery for ensuring greater effectiveness of existing institutions, for example, legislation to reform the police service and vesting the Commissioner of Police with the powers that are needed to ensure a higher level of performance and overall efficiency in the police service. That legislation has been passed.

The qualification requirements for appointment to the Office of the Commissioner have been upgraded and Parliament itself now has oversight of the appointment of members of the Police Service Commission and that of the Commissioner of Police.

Madam President, it is not the politician; the Government does not fight crime, it depends on the police service. I support the Police Service of Trinidad and Tobago; we depend on the police service.

Secondly, other pieces of legislation intended to improve the process within the criminal justice system are steadily being brought to Parliament and this Bill is but one of what has really been a series of measures in that respect.

Thirdly, other institutional arrangements are being pursued including proposals for a special criminal court which are now being examined with a view to bringing such an institution into operation as quickly as possible, we hope within the next two years. A site has provisionally been identified and work is continuing apace.

Legislation for the statutory creation of the Special Anti-Crime Unit of Trinidad and Tobago (SAUTT) should be introduced in Parliament this year.

Included among the interim measures aimed at the reform of the criminal justice system was a package of legislation a year and a half ago, some of which were discussed with, and accepted by Members of the Opposition.

These include the Bail (Amdt.) Bill, now the Bail Act, 2006 which provides that a court is not to grant bail to a defined class of persons with respect to certain categories of offences. The DNA Bill, 2007 which introduced modernized procedures for DNA testing, that is in the Lower House as we speak. The Breathalyser Bill; Motor Vehicles and Road Traffic (Amdt.) Bill 2007; which is also in the other place; the Indictable Offences (Preliminary Enquiry) (Amdt.) Act 2005, which revises the paper committal system for the committal of accused persons on the basis of written statements submitted by the prosecution to the magistrate, we did that in 2005 by a simple majority and in doing so we dispensed, to some extent, with the hearsay rule and I will come to that in a while.

The Criminal Procedure (Amdt.) Act, which provided where fact is not in dispute between parties in a high court trial, then that fact, can be formally admitted into evidence. That was done at the same time as the package of legislation including the Indictable Offences (Preliminary Enquiry (Amdt.) Act. Then a series of amendments to: the Evidence (Amdt.) Act, Larceny (Amdt) Act and the Forgery Act were done in an omnibus Act, the Administration of Justice (Miscellaneous Provisions) Act, 2005. The overall intent in that Act was to expedite trials in the Magistrates' Court and High Court and to implement change in certain key areas of the substantive criminal justice system.

Madam President, legislation alone will not solve all our nation's problems. They cannot solve the crime problem, but the Government considers that further legislative measures are now required for the purpose of both strengthening the administration of justice and curbing the criminal activity in this country.

This Parliament, and indeed this country is well aware of the challenges faced by the prosecution in securing conviction for offences such as murder and kidnapping as a result of witness tampering in this small nation, witness intimidation, and unfortunately, the elimination in some cases of witnesses.

I seek your indulgence to highlight a couple actual court cases which are okay for me to cite because they are not sub judice. In the *State v. Terrance Cedeno*, (aka Satan) for murder, the main witness refused to return to Trinidad and Tobago to testify and felt it was unsafe. In that case he was kept away by threats of bodily harm, and despite reasonable steps being taken by the State, he could not be brought to the jurisdiction. However, he had signed a deposition but it was not

possible to put it into evidence under the Indictable Offences (Preliminary Enquiry) Act as there was insufficient cooperation from civilian family members to provide the evidential basis to have the deposition read.

The police however, were aware of his reasons for not returning and through such officers the State could have proven that he was kept away and so read the statement. In this Bill, clause 15C(1)(e) will now allow evidence in this type of matter.

Another practical situation which has occurred recently, and the events are still alive in the minds of Members, was the case of *The State v. Sean Sandy, Rommel Sandy, also called "Bumbles" and Earl Henry* for murder. Unfortunately, Madam President, these persons are not with us today. There was an exchange of fire and they were shot by the police.

The two main witnesses could not be located in that case, both disappeared. One was known to have left the jurisdiction and his whereabouts could not have been ascertained. The accused was discharged for murder, he walked free. In this case the amendment here in clause 15C(1)(d) would capture such a case and the evidence of the two main witnesses would be read. These are dangerous persons and this is a small country and we do have a problem with witness intimidation.

In the *State v. Haridath Solomon and Another* for kidnapping, an accused person who has a matter which is pending, and I am therefore unable to discuss this matter in great detail, this is a separate matter from the one that is pending, the accused was discharged when the indictment which was based on the evidence of one Kalipersad Maharaj, who gave evidence in the preliminary enquiry. A week after the matter came up for hearing, the prosecution indicated its readiness to proceed, the victim was again kidnapped, and despite diligent searches could not be found even after two years

The accused were freed in January 2006. It was not possible to prove the death of the witness and, therefore, the deposition in the case could not be read. Had a statement been taken in accordance with the proposed legislation, his evidence would have been placed before a jury and, perhaps the outcome might have been different.

In November 2006, in the case of the *State v. Gary Lewis and David Dean* who were both charged for murder, the High Court was forced to free both men because the witnesses refused to testify against them citing fear for their safety again. The presiding judge in that case said that the country's criminal justice system was under siege and that in the circumstances where witnesses were afraid to give evidence, then justice simply cannot be done.

Consequently, both the Director of Public Prosecutions (DPP) and the judge called on the authorities to act quickly and put in place systems to address the problem. This Bill speaks in part to this problem. It will not be a panacea for all our ills, but it tilts the scale of justice more in favour of balance, they are now heavily in favour with the defence because of our anachronistic legislation.

So that whilst maintaining respect for individual rights—and I will show how that is done in this Bill and in the amendment which I propose to circulate—this legislation can capture these concrete cases and so we might have a different result in relation to matters which come before our criminal justice system.

Madam President, the Government will be failing in its duty to the public if it does not take appropriate steps to deal with this situation now. We intend to do what we can to move legislation which, if enacted, will make it possible for the statements given by these silent witnesses in the course of an investigation where such witnesses are unable to attend court, to be admitted in evidence under circumstances which are specified in the Bill.

2.00 p.m.

The provisions of the Bill have been patterned on the Evidence Act of Jamaica. Similar legislation in relation to the proposed sections 15C, 15D and 15E of the Bill exists in Jamaica at sections 31D, 31J, 31L of the Evidence (Amdt.) Act, 1995, which in the Jamaican Act is Act No. 12 of 1995. Similar legislation exists as well in the United Kingdom in section 23 of the Criminal Justice Act of 1988 and section 116 of the Criminal Justice Act of 2003.

Section 31D of the Evidence Act of Jamaica provides that a written statement made by a person is admissible in criminal proceedings—and this will include a preliminary enquiry—as evidence of any fact of which it is admissible as oral evidence if the court is satisfied that such person is dead, physically or mentally unfit to attend as a witness, is unable to attend court because he is outside the jurisdiction, cannot be found or is being kept away by threats and it is difficult to protect him.

The validity of the sections I mentioned earlier in the Evidence Act of Jamaica were thoroughly examined by the Privy Council in the Jamaica case of *Grant v. The Queen*—which I intend to spend some time on this afternoon—that is Privy Council Appeal No. 30 of 2005. It is clear from this case that legislation such as this can be enacted without the requirement for a special majority. This is simple majority legislation; we do need to go and create special majority legislation; the country demands action on this matter now; we are here to provide that action. [*Desk thumping*]

Madam President, I now propose to take this Senate through the clauses of the Bill, the main purpose of which is to render admissible hearsay evidence which would not otherwise be admissible under the rules of evidence.

Clause 2 of the Bill seeks to amend the Evidence Act by inserting four new sections after section 15A of the parent Act. The proposed section 15B will authorize the prosecutor—now the prosecutor, I say that for my colleagues; not the Attorney General, Madam President, the prosecutor—to admit into evidence in a criminal matter a document that specifies criminal conduct of a defendant where that document is the best or only evidence of the conduct and was obtained by the Central Authority in accordance with the mutual assistance in the Criminal Matters Act, 1997.

The procedure is as follows: An investigator, police officer or otherwise approaches the Central Authority with a request for mutual legal assistance. The Mutual Legal Assistance scheme was formed in Harare in 1986. What happens is that the scheme piggybacks on the Interpol system, but it interfaces with central authorities in countries which participate in the scheme. So Interpol police officers go on the ground in the United Kingdom; they collect evidence; they go and carry that evidence to Bow Street Magistrates' Court; the evidence is sworn before the magistrate at the Bow Street Magistrates' Court then it comes back to Trinidad. All of this is done through the Office of the Attorney General because this is where the Central Authority is found.

It is found in the Office of the Attorney General not because of me, but because in 1997 we had something called a Mutual Assistance in Criminal Matters Act, 1997. Now, you know that 10 years ago in 1997 I was in a very different place and someone else was doing this job. So the Central Authority is a creature of the Opposition UNC. It is a creature of the Opposition UNC in the Office of the Attorney General, and it is done like that for a specific—There are 15 countries—

Sen. Mark: This is ours, we will change it.

Sen. The Hon. J. Jeremie, S.C.: You could change it but I would not for the time being—which take part in that scheme within the region. Of those 15 countries, 12 have located the Central Authority—maybe they knew what they were doing—in the Offices of Attorney General as opposed to the office of the prosecutor. There might be several reasons; I was not around, they were there, when this was happening. But I have been told by my colleagues in Barbados and the United States that the reason is to put some distance between the prosecution, which uses the documents—and I must look at the documents as to whether or not they have probative value, and the requesting authority.

Also it allows to interface with those jurisdictions in which there is no director of public prosecutions because you must remember that this was such a jurisdiction up to 1976. Not all jurisdictions have a director of public prosecutions; all have an attorney general and the Offices of the Attorney General is in an elaborate system of web links, contact persons and so forth; they meet, they know what they are doing; their work is insulated and pure and that is the system that my learned friends set up and we have done nothing to change that.

Madam President, I dare say, that is the only mention of the Attorney General in this legislation. I saw some people jumping up on television on Friday; I will come back to that.

Sen. Mark: Who are these people?

Sen. The Hon. J. Jeremie, S.C.: The only mention of the Attorney General in this legislation is in relation to the Central Authority. [*Crosstalk*]

Hon. Senator: He was not jumping up, he was sitting down.

Madam President: Senator.

Sen. Mark: Say Wade Mark, "doh" say people. [*Interruption*]

Madam President: Senator, when the time comes—

Sen. Dr. Kernahan: It is Carnival time.

Sen. Mark: It is Carnival time, you know.

Hon. Senator: So you are entitled to jump up?

Madam President: Senator!

Sen. The Hon. J. Jeremie, S.C.: Yes, Ma'am, it was real "ol' mas'" on Friday.

Sen. Mark: It was real "ol' mas'" on Friday, I am telling you, Ma'am.

Sen. The Hon. J. Jeremie, S.C.: The point is that the Central Authority is where it is; it is in the Office of the Attorney General. So those two words, which were like a red flag to certain people, appear only once; once Attorney, once General, in the legislation, but there is a red flag all over the place.

Sen. Dr. Gopeesingh: You know why you are a red flag.

Sen. The Hon. J. Jeremie, S.C.: Madam President, I do not think I have to say too much more on that score.

Sen. Mark: Let me hear about the jumping up now.

Sen. The Hon. J. Jeremie, S.C.: Because of the confines of the present Evidence Act the documents which are gained in the process of mutual legal assistance cannot be tendered into evidence. The documents go in with the bank manager from England; so the bank manager goes to Bow Street Magistrates' Court; he swears that these are the records of his bank and he thinks that that is it; it is not. He then has to worry about coming to Trinidad and as I go on, we will talk about that.

The problem that arises is that witnesses from abroad have to travel to Trinidad and Tobago to give evidence in person before the courts; this can be very expensive and also there is the possibility that the matter may not go on because the witnesses may refuse to come. In a recent much publicized preliminary enquiry—I say no more than that—

Sen. Mark: You better "don't".

Sen. The Hon. J. Jeremie, S.C.:—witnesses plus police escort—because they were terrified, they were threatened in the United Kingdom—travelled from England on more than one occasion to give evidence in the local courts at much expense to the taxpayers of this country, especially as it was stipulated that they were to travel business class. Proposed section 15B will allow the evidence admitted in a foreign court to be admissible as evidence in Trinidad and Tobago courts. This provision once it comes through the Mutual Legal Assistance—

Sen. Mark: That was the aim.

Sen. Dr. Gopeesingh: That was the aim.

Madam President: Senators!

Sen. The Hon. J. Jeremie, S.C.: This provision would become applicable particularly in the case of expert witnesses. Similar legislation exists in England. In Chap. 2, Part 2 of the Criminal Justice Act, 2003—go do some homework—in Article 8 of the Federal Rules of Evidence in the United States of America and the Evidence (Amdt.) Act, 1995 in Jamaica, the proposed section 15C will seek to provide for the admissibility of first hand hearsay statements in criminal proceedings, where the maker of the statement is dead or cannot be present in court for a number of reasons. We spoke to a number of categories earlier, when I was giving practical illustrations of how this legislation can help us.

This clause requires that notice of the statement to be tendered into evidence must be given to every other party to the proceedings at least 21 days before the hearing at which the statement is to be tendered. That provides the checks and

balances so that you are balancing the right of the accused with the right of the society to have justice done.

This clause also requires that where the party intending to tender the statement in evidence has called the person who has made the statement as a witness, the statement shall be admissible only with the leave of the court—further protection.

Madam President, I would like this honourable Senate to note that although this Bill introduces a measure which is obviously advantageous to the prosecution, the operation of this clause is subject firstly, to checks and balances identified in section 15D and secondly, to the general discretion of the court to declare the statement inadmissible if its prejudicial value is greater than its probative value.

There is no automatic right to have these statements admitted into evidence. There is no automatic right—I need to repeat that; so the statements do not walk in, even after all these conditions are met—to have these statements brought into evidence. There is right, though, in this legislation to ask the Tribunal to make a determination as to whether the document is of more value than of harm. So the Tribunal has a right to determine where the justice of the case requires.

This inherent power is only vested at common law in the High Court; it is not in a magistrate's court. Hence I wish to indicate to hon. Senators that an amendment is being circulated to expressly provide both courts with the power to exclude hearsay evidence, where either court is of the opinion that the evidence is contrary to the interest of justice.

The proposed amendment would be inserted as a new section 15E and the existing section 15E will be renumbered as section 15F. A consequential amendment will also be moved to the renumbered section 15F; that is to insert the reference to the proposed section 15E, to ensure that an enquiring magistrate will have the discretion to exclude prejudicial evidence.

By virtue of the proposed section 15D, when a statement is admitted under the proposed section 15C, the court shall admit any evidence tendered by the defence that is relevant to the credibility of the witness making the statement. Likewise, evidence may also be given of any matter that if that person had been called as a witness could have been put to him in cross. Previous inconsistent statements showing that the person contradicted himself shall also be admissible. The proposed section 15E would make the proposed section 15B, 15C, and 15D applicable to a preliminary enquiry held under the Indictable Offences (Preliminary Enquiry) Act.

Members of this honourable Senate, I am sure that those among us who appreciate common law traditions and principles, would argue the old common law principle that evidence against the accused person at a criminal trial should be given by witnesses who attend court to give that evidence on oath, who can be cross-examined by or on behalf of the accused and whose demeanour can be assessed by the jury. That is the duty of the jury; to determine the veracity or reliability of the evidence. But this rule against hearsay is not a principle that is cast in stone. While this has always been held to be the best type of evidence, Parliaments and the courts can and have created exceptions.

This Bill seeks to do no more than that which has been done in other jurisdictions facing similar types of difficulty. The Bill seeks to make changes to the rules of evidence by informing the law relating to the admissibility of hearsay in criminal proceedings. The common law rule against the admission of hearsay is generally accepted as meaning that an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact or opinion asserted. This means that only a statement given by a witness orally in court proceedings is admissible as evidence of the facts as they represent them.

The main implication of this rule is that witnesses must give oral evidence in court from first-hand knowledge and may not repeat what other persons have told them. [*Interruption*] Yes. For example, written records are inadmissible evidence of the matters they contain—and that is what I alluded to before when I spoke about the bank manager who goes to give evidence in the United Kingdom.

Witnesses must give oral evidence, and a written statements cannot be a substitute for their personal appearance in the witness box. Witnesses must give evidence from first-hand knowledge and may not repeat what other persons have told them.

Previous out-of-court oral statements made by the witnesses themselves are inadmissible evidence of the matters they contain. There are several exceptions to this rule, several exceptions which we already have to this rule against hearsay; some of which are found both in the old common law and some of which exist by statute. Ours will be a statutory exception; we are not singular; we are not reinventing the wheel; we are borrowing from the English; we are borrowing from the Americans; we are borrowing from the Jamaicans. At common law the rule was subject to the exception that documentary evidence was admissible per se as hearsay.

However, inroads were made on the original position in relation to criminal proceedings. So that today, it is no longer possible to speak of an absolute

prohibition on the admission of hearsay evidence against criminal defendants in relation to documentary evidence. There are many recognized common law and statutory exceptions which exist, subject to procedural safeguards, on the common law rule against the admission of—the old common law rule. For example, in the United Kingdom under section 9 of the Criminal Justice Act, as long ago as 1967, evidence in written form containing a prescribed declaration and not objected to by the other side was admissible.

A similar provision exists in Jamaica, section 31C of the Evidence Act; in Barbados, section 132 of the Magistrates' Court Act, 1996, and in Canada, section 540 of the Criminal Code, 1985, C46. Within recent times equivalent legislation has been introduced in Trinidad and Tobago. This is what I was speaking of earlier when I said that we had dealt with the hearsay rule to some extent in Act No. 15 of 2005, which amended the Summary Courts Act, Chap. 4:20:

> "To provide for the admissibility of uncontroversial, written statements in summary matters."

Also certain business records are admissible by virtue of the Criminal Evidence Act, 1965, United Kingdom. These were extended by virtue of the Police and Criminal Evidence Act, 1984, Part 7 and section 117 of the Criminal Justice Act, 2003 of the United Kingdom. In the Caribbean, statements contained in business records and in computer generated printouts are also admissible in evidence as direct oral evidence provided that certain conditions are satisfied; in certain places. For example, sections 31F and 31G respectively of the Evidence Act of Jamaica or sections 14 and 14B respectively of the Evidence Act, Chap. 7:02 of Trinidad and Tobago.

Furthermore, legislation of this type, whether in the United Kingdom or in the Caribbean provides adequate safeguards for the rights of the defence when it is sought to admit hearsay evidence. The safeguard may be either expressed or implied. For example, in the United Kingdom, section 25(1) of the Criminal Justice Act gives the court the express discretion to exclude documentary evidence in the interest of justice as discussed in the case of *R v. Gokal*.

A similar section also exists in Jamaica in the form of section 31L of the Evidence Act. It is a fundamental rule that a defendant has the right to cross-examine persons who give evidence in court against him. This is part of the principle of natural justice and is to be seen embodied in section 5(2)(e) of our Constitution. But constitutional rights are not absolute rights. They are always

subject to the rights of other persons which are reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual; this is section 13 of our Constitution.

This constitutional principle has been accepted by the Privy Council in the case of *Morgan v. the Attorney General of Trinidad and Tobago* and can be seen in cases such as the *Republic of South Africa v. Sunday Times Newspaper* and in *De Freitas v. Ministry of Agriculture, 1998.*

The European Court of Justice has time and time again stressed that in assessing the admissibility of evidence, the sole concern of the Tribunal is to assess the overall fairness of the criminal procedures in question; see for example, *PS v. Germany*. What matters is the fairness of the proceedings as a whole. Just as section 13 of the Constitution recognizes that individual rights cannot be enjoyed without regard to the rights of others, the court has recognized the need for a fair balance between the general interest of the community and the personal rights of the accused defendant, because the rights of the defendants must be safeguarded, but the interest of the society and the victims of crime must also be respected.

In the Grant case, Lord Bingham, delivering the judgement of the board—this is a Jamaican case with similar provisions—said at page 12:

"If a prosecution witness is kept out of the way..."

And this is important because the courts are struggling to find ways to deal with what is a problem. The problem is the silent witness. So what Lord Bingham said is that:

> "If a prosecution witness is kept out of the way by the actions of the defendant, then it will be intolerable for him to rely on his human rights to prevent the admission of hearsay evidence."

Madam President, that is only fair. What the Bill does is to give the court the power to make that determination; so the court then has to balance: Is the prejudicial effect more than the probative value? That is what Lord Bingham said. He said:

> "That it will be intolerable for a defendant who terrorizes his witness to rely on his human rights to prevent the admission of hearsay evidence."

He concluded:

> "That where a witness is dead or cannot be traced ..."

And these are examples which are dealt with in our legislation.

> "…the argument to admit hearsay evidence may be less irresistible."

But that is a matter for the court. What we are doing is merely facilitating the court to make the determination now. That is a matter for the court, it is not a matter for us; it is a matter for the judges to determine: Is the prejudicial effect more than its probative value?

They are already developing criteria. They say, if you, as Mr. Bandit, terrorize your victim and keep him away, we are not going to have any patience with that. But if the witness is dead or cannot be traced, the argument to admit hearsay evidence is less irresistible, so they are developing their own standards of dealing with it. He noted that there may still be compelling reasons to admit it, "provided always that its admission does not put the defendant at an unfair advantage". That is what Lord Bingham is saying in the Grant case. Lord Bingham is still sitting on the Privy Council.

Both the common law rule and the way in which the exceptions operate, however have been the subject of considerable criticism, the old common law rule against hearsay, because the rule was thought to be inflexible. So what happened in this area of the law was that the United Kingdom Law Commission Report—and this is similar to our Law Reform Commission, which we passed here resoundingly last week. They commissioned a study on evidence in criminal proceedings, hearsay and related topics, which included 50 recommendations for reform. The area of the law was again considered by Sir Robin Auld, as part of his review. Sir Robin concluded that we should move away from the strict rule against the admission of hearsay evidence in criminal proceedings to a more flexible position where we admit such evidence and instead trust fact finders to assess the weight of the evidence. That is consistent with the objective of legislation; it meets the mischief that we are trying to meet. Those four actual cases that I cited in the beginning of my presentation; it meets the mischief and it solves our problem.

Our Bill aims to simplify the law and to provide greater certainty as to the circumstances when out-of-court statements in criminal proceedings will be admitted. The main provisions remove the old common law rule against the admission of hearsay evidence and provide that such evidence will be admissible, providing certain safeguards are met and you cast it on the decision maker; the Tribunal. It is the courts; it is not the Director of Public Prosecutions; it is not the Attorney General—who some persons were jumping up on Friday and talking about.

Madam President, one fundamental constitutional problem was dealt with in the Grant case and in the spirit of full disclosure I will discuss that principle. That constitutional issue was whether Parliament, by going this route, is attempting to deprive the defendant of his right to protection of the law guaranteed under

section 4 of the Constitution, as well as the right to a fair hearing, guaranteed under section 5(2)(f) of our Constitution. That right in Trinidad and Tobago will include the right to examine in person, or by his legal representative, witnesses called by the prosecution. It was arguable at the time Grant was decided that any legislation which seeks to enact provisions to the contrary should be passed by the required constitutional majority.

What this Bill seeks to do is to create statutory exceptions, putting into effect in circumstances in which the interest of the State, in protecting its citizens from the criminal element in the society, is being balanced by the right to a fair hearing, given to the defendant under the proposed section 15D.

Madam President, in the Grant case it was argued that the enactment of provisions corresponding to those contained in this Bill could be undertaken only with the prescribed constitutional majority; their Constitution was slightly different from ours. In section 13A of the Constitution of Jamaica it was guaranteed to every person in Jamaica the fundamental right to the protection of the law and this right was reinforced by the provisions of section 20(6)(d), which recites that "every person charged with a criminal offence"—now this is in the face of a constitutional injunction in Jamaica—"shall be afforded facilities to examine in person or by his legal representative the witness called by the prosecution before any court and to obtain the attendance of witnesses".

So they have a strong argument because their Constitution itself provides a buttress, a leg for the hearsay principle. It says not only that you have a right to a fair hearing; it says explicitly that you shall be afforded facilities to examine in person the witnesses called by the prosecution before any court and to obtain the attendance of witnesses.

What does the court do? It was contended that the new section 31D shall with one exception, the same as the provisions of the Bill now before this Senate, was in conflict with the defendant's fundamental right to the protection of the law and therefore prescribed constitutional procedures should have been following. The argument was if you have it in the Constitution—we do not have it in our Constitution as they do in Jamaica—then follow the prescribed majority for amending the Constitution.

What the Privy Council did was to uphold carte blanche the constitutionality of the legislation, notwithstanding the fact that it was passed with a simple majority, notwithstanding the fact that its provisions are similar to the provisions in our Bill, which is proposed today. They said that there is a presumption of

constitutionality of an Act; that there are many recognized common law and statutory exceptions to the hearsay rule; that subject to procedural safeguards, the common law rule against the admission of hearsay evidence may be varied for good cause and that constitutional rights are not absolute rights.

Madam President, I dare say that those comments are appropriate to us in Trinidad and Tobago. We do not have such a strong clause which protects the hearsay rule in our Constitution, but certainly by tradition we know of the hearsay rule, but that is not, as I have stated, sufficient. The English common law itself, by tradition, recognized that there were several instances in which the hearsay rule would work to promote an injustice and this is what Lord Bingham is saying in Grant.

2.30 p.m.

He is saying that if you, as an accused person, chase away your witnesses in a criminal matter—I cited those four criminal cases as practical cases in Trinidad—then the courts will deal with you; not the DPP, not the Attorney General. All we are doing is giving the courts the power to say, look, these are the circumstances. We can show that "X" was to give evidence on such and such a day; we can show that he was kidnapped—in the Haridath Solomon case which I mentioned earlier on, two weeks before he was supposed to give evidence, he disappeared from the face of the planet for two years and you have a dangerous man on the streets as a consequence of that.

This legislation, Madam President, allows the court and the society to deal with those people. The Privy Council also noted that there is no absolute prohibition on the admission of hearsay evidence and in any event Lord Bingham stated that the laws of Jamaica, properly applied provide sufficient safeguards for the protection of the rights of the accused when it is sought to admit hearsay evidence, because the legal system as a whole constitutes proper due process for the individual. That is the test which is now gaining currency in the face of significant battery on the part of an accused person, that what the courts would look at is the legal system as a whole, to see whether or not due process is guaranteed to the individual as opposed to picking holes here and there and technicalities and saying, okay, seeing what happens every other Monday morning. And these things hurt me, they hurt the Director of Public Prosecutions who was kind enough to prepare some of my material today.

Sen. Mark: You are lucky.

Sen. The Hon. J. Jeremie, S.C: Madam President, it is my view that guidance has been provided in the grand judgment for the courts to administer

these provisions and for this Senate to accept the proposed amendments to the Evidence Act. Clearly, there is no infringement of any constitutional rights. Clearly, it cannot now be business as usual in Trinidad and Tobago.

The Government is of the view that the proposed legislation which exists in Jamaica and in the United Kingdom is necessary at this time to facilitate the dispensation of justice in Trinidad and Tobago in the current period of increasing criminal activity. The Government acknowledges that while the rights of the individual must be safeguarded, the interest of the victims and those of the wider society must also be served. This legislation seeks to do that.

The focus of the proposed legislation is to ensure that the system as a whole does not operate unfairly to the defendant in the context of the proceedings as a whole. To this end, the legislation properly applied provides adequate safeguards for the rights of the defendant. I have read through the sections. I have shown you where the magistrate has the power to exclude the evidence and those are the safeguards. That is, clear conditions are specified and must be met before the evidence will be admitted. The defence has the right to challenge the credibility of the maker of the hearsay statement and the court has the general discretion to exclude the evidence if its prejudicial effect outweighs its probative value.

Madam President, it in my hope that this Senate will support the Government in its efforts to further reform the law relating to evidence. We must act to prevent the collapse of the criminal justice system and to take yet another step in creating a safer environment for all the citizens of this country.

Before I close, Madam President, I should like to refer to two matters, one which dealt with—I read in the weekend newspaper, and I take what I read in the newspaper with a pinch of salt, but there has been no public statement to the contrary by any one of my good friends opposite—that the Bill was an Act which sought to concentrate power in the hands of the Attorney General. I think I have debunked that by showing them where their own legislation provides for the office of the Central Authority in the Office of the Attorney General, and if I were to create this power anywhere else I would be ultra vires the legislation which they passed.

Sen. Dr. Gopeesingh: Changed the legislation.

Sen. The Hon. J. Jeremie, S.C.: Change your legislation; why? At this time it is working well. That is one. I think, I have dealt with that. Now in relation to the diminution of rights point, I think I have dealt adequately with that by carrying us through the European Commission's findings on this matter; the law reform

finding on the hearsay rule which held that it had outlived its usefulness and it was time to do some serious work on it, and the numerous common law and statutory exception which exists.

And finally, the Grant case which provides useful guidance for our courts, if and when we provide them with the tools which they are crying out for to save us because the players on the frontline of the war against crime are the police service, whom I support, and the Judiciary. Those are the players on the frontline of the war against crime in this country and we have to give them every single tool which we can to enable them to wage a successful war on our behalf.

Madam President, I beg to move.

Question proposed.

Sen. Wade Mark: Thank you very much, Madam President. I have been in Parliament for a number of years in this honourable Senate and this Bill entitled, "An Act to amend the Evidence Act, Chap. 7:02" is one of the most dangerous pieces of legislation [*Desk thumping*] I have ever seen during my 17 years as a parliamentarian. I will demonstrate during my contribution the dangers of this piece of legislation and the political implications in an election year of this piece of legislation.

Madam President, I would like to begin my response to the hon. Attorney General's presentation by submitting for your consideration a kind of anecdotal instance of miscarriage of justice consistent with the provisions contained in the legislation before us, which purports to introduce hearsay evidence in all criminal proceedings for the first time ever in an independent Republic.

Madam President, I want you to imagine a man's wife is having an extramarital affair, as a result, James proceeds to reveal that Luke said, that Saint—the husband of the cheating wife—contracts or hires Jesus to kill or to murder the man with whom the cheating wife is having this affair. Madam President, this information which James told Luke about Saint is then passed on to the Director of Public Prosecutions through the police and a conviction of Saint ensues. You see it is hearsay, Madam President, because as I would demonstrate in section 15C some of these people are not available.

Madam President, is this what is going to constitute the basis for the conviction of innocent citizens in this country? We are all at one with the Attorney General that we have to fight the criminals. But you should never have slept in bed with the criminals in the first instance if you want to fight crime!

[*Desk thumping*] Five and a half years later, after you have paid that price you are now bringing legislation to eat away and erode the rights of innocent citizens. Would this erroneous, hearsay, evidential material be seen as a new form of justice in our country? Do you think, Madam President, that as a parliamentarian of long-standing, I can stand idly by and allow this usurpation of people's fundamental rights and freedoms?

Madam President, if we were on that side of the Senate today, what would we have done as a Government in the face of this scourge that is sweeping this country? Madam President, I will tell you what we would have done. What a UNC Government would have done after we passed in 1997 the Mutual Assistance in Criminal Matters Act, we would have introduced an amendment, given two judgments of the Court of Appeal involving *Dhanraj Singh the State and Naraynsingh Ramasir v. the State* in which it was made pellucidly clear that the Attorney General of Trinidad and Tobago has no business in criminal proceedings in our Republic. [*Desk thumping*] And it is only the Office of the Director of Public Prosecutions under section 90 of our Constitution—and I will give you some evidential information as it relates to the incursion on the part of this evasive Attorney General into the territory of the holder of the office of Director of Public Prosecutions.

So, Madam President, what we would have done; we would have taken into account the judgments of the High Court, the recent one issued on December 19, 2006 in which the role of the Attorney General of Trinidad and Tobago was made absolutely clear by the courts of Trinidad and Tobago. But here it is, this Attorney General who seems to be obsessed with power and singing for his supper on behalf of his master at Whitehall, he brings legislation here conscious of the fact that there are two judgments in the Court of Appeal indicating to him that he has no business in criminal matters. And, Madam President, I want you to go through this Bill carefully, you know, because today I am defending you, because it could happen to you, it could happen to Sen. The Hon. Dr. Lenny Saith, it could happen to Dr. Rowley, it can happen to Hon. Colm Imbert. This Bill is a dangerous piece of legislation and this Attorney General stands up here like Pontius Pilate and gives this innocence about his deadly legislation this afternoon that is designed to undermine the rights and freedoms of ordinary citizens, and by extension any politician, or who they consider to be opponents.

Madam President, I will show where we would have amended today—and I thought an Attorney General of the calibre—although he never practised in a court of law in his life but he got an S.C. tagged to his shoulders. I would have

thought that if you went to what is in the legislation called the Mutual Assistance in Criminal Matters Act, the hon. Attorney General would have brought an amendment to sections 3 and 4. When we passed this Act in 1997 in accordance with the Harare Declaration by Ministers of Legal Affairs and Attorneys General, that was in 1997 and it went on and it was relevant until two years ago when a Court of Appeal said that the Attorney General cannot trespass into the office and into the functions and duties of the Director of Public Prosecutions.

Sen. Dr. Gopeesingh: And criminal proceedings.

Sen. W. Mark: In criminal proceedings; so, Madam President, if we go to this Mutual Assistance in Criminal Matters Act, 1997 you will see under section 3, and I quote:

> "Subject to subsection (2), the Attorney General shall be the Central Authority."

In this legislation the Attorney General is the Central Authority, and it goes on to say:

> "The Attorney General may delegate to a public officer, any of his functions under this Act."

It goes on in section 4 to say:

> "The Attorney General may, by Order, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the Order..."

So in criminal matters within the Commonwealth nations the Attorney General assumes unto himself in accordance with this Act the power to deal with criminal matters because the attorney general from one country in the Commonwealth would contact our Attorney General in Trinidad and Tobago.

Madam President, if this Attorney General had any respect for the courts of this country he would have never brought to this Parliament this amendment to the Evidence Act continuing to give himself power to deal with criminal matters—

Sen. Montano: Madam President, the Senator is misleading the Senate. That is not what he has done.

Madam President: Senator, please, would you give way?

Sen. W. Mark: No, no, no; he says I am misleading. Madam President, he says that is a point of order. That is not a point of order. [*Crosstalk*]

[*Both Senators standing*]

Madam President: Would both of you please sit down!

Sen. W. Mark: He will speak when I am through.

Madam President: Misleading is not a point of order. [*Crosstalk*] No, just one moment; I am also trying to make some sense of what you are saying, but I do not remember hearing the Attorney General saying what you are trying to say, that by this legislation—

Sen. W. Mark: I am not saying he is saying; I am saying this is what is in the law. This is not about what he says.

Madam President:—giving him more power unto himself. [*Crosstalk*]

Sen. W. Mark: Madam President, you have to get a copy of this law, you know. You have to get a copy of this law.

Madam President: Just now, wait! Can I just hear what—yes!

Sen. Montano: With all due respect there is a Standing Order that prohibits the Senator from imputing improper motives and it is a very clever way; that is exactly what he is doing. He cannot do that!

Madam President: I will let you continue for a little while, let me hear and then—[*Inaudible*]

Sen. Dr. Gopeesingh: It is not personal; it is the Office of the Attorney General.

Sen. W. Mark: Madam President, I am not—and I want to make it very clear—dealing with the person. I am dealing with an office called the Attorney General of Trinidad and Tobago.

Madam President: All right, Senator. Senator, okay, please sit down! If you are dealing with the office then I will suggest that you stop referring directly to the person who now holds the office, because you are doing so in your statement.

Sen. W. Mark: But I am not imputing improper motives!

Madam President: Well, as you know, very, very subtly it is coming over like that.

Sen. W. Mark: All right, well I will try to be less subtle. [*Laughter*] I will try to be less subtle. But why are they so thin-skinned? This regime that is on its way out, why are you so thin-skinned?

Hon. Senator: Robin coming back.

Sen. W. Mark: Madam President, may I continue? [*Laughter*] May I continue?

Sen. Dr. Gopeesingh: We will welcome him back.

Sen. W. Mark: I will demonstrate in my contribution what, as I said, we would have done. I was bringing to your attention and to the honourable Senate's attention that what we would have done, is to amend this Act and not to do what the Attorney General is doing. What the Attorney General is doing here, and go to section 15B, what the Attorney General is saying—John Jeremie—what he is saying—

Madam President: It is the office.

Sen. W. Mark: The hon. John Jeremie, Attorney General of the Republic of Trinidad and Tobago; he is saying, through this Bill that he piloted a short while ago:

> "In any criminal…(matters or)…proceedings, evidence of criminal conduct which may be contained in a document may be admissible in evidence if the document—
>
> (a) is the best or only evidence of that conduct which is alleged by the prosecution; and…"

Madam President, hear the danger, go to:

> "(b) is obtained by or under the hand of the Attorney General…"

Madam President, I am talking about what is in the legislation. The Attorney General is a political appointee.

Sen. Montano: Madam President—

Sen. W. Mark: Madam President, this man is interrupting me.

Madam President: Is this a point of order?

Sen. W. Mark: Is this a point of order?

Sen. Dr. Kernahan: What is the point of order?

Sen. W. Mark: What is the point of order?

Sen. Montano: Madam President, he is clearly starting now to impute, clearly, improper motives—

Hon. Senator: How? [*Crosstalk*]

Sen. W. Mark: Madam President, he is just disrupting my contribution. [*Crosstalk*]

Madam President: Please Senators, let me listen to the point of order!

Sen. Montano: Madam President, he starts off—

Sen. W. Mark: He is interrupting my contribution.

Sen. Montano:—to read the clause and starts off calling the name [*Interruption*] of the Attorney General. He then gets down to subclause (b) and then stops reading after the words "Attorney General", because if you read it only up to that point it is grossly misleading and unfair. It is the Attorney General—

Sen. W. Mark: Madam President, he will get a chance to speak. He will get a chance to speak; he is interrupting me, man. [*Crosstalk*]

Sen. Montano:—acting as the mutual legal officer. That is what it is and you cannot leave out—[*Crosstalk*]

Sen. W. Mark: You are interrupting me, man; you are interrupting me. [*Crosstalk*]

Madam President: Please Senators!

Sen. Dr. Gopeesingh: Sit down.

Madam President: Senator, you cannot tell the Minister to sit down. I will tell him to sit down if necessary.

Sen. W. Mark: Madam President, can I continue my contribution and tell the Attorney General to speak without interrupting me?

Madam President: Sen. Mark, you can continue, but please stop dropping hints or pointing fingers—

Sen. W. Mark: Madam President: Let him leave the Chamber if he cannot take that.

Madam President:—at the person who is the Attorney General; whether he is in the Chamber or not.

Sen. W. Mark: But why is he thin-skinned?

Madam President: Do no do it; just talk in general. This is what the legislation, as far as I understand says, that the Attorney General is the Central Authority.

Sen. W. Mark: Yes, that is what I am saying.

Madam President: And therefore it does not refer to any person but rather to the Office of the Attorney General, please.

Sen. W. Mark: All right, let me deal with the Office of the Attorney General, and maybe my colleague from the other side would be a little more understanding. Madam President, the truth offends! That is what is offending him today. [*Desk thumping*] The truth is offending him. [*Desk thumping*]

Madam President: Could you go back?

Sen. W. Mark: Madam President, what I am saying is the truth offends. What did I say?

Sen. Montano: You are lying by omission.

Sen. W. Mark: You hear what he said? I am lying.

Sen. Montano: And you know it. [*Crosstalk*]

Hon. Senator: What language is that, Member?

Sen. W. Mark: Could you withdraw that statement?

Sen. Dr. Kernahan: What kind of language is that?

Sen. W. Mark: What kind of language is this? [*Crosstalk*]

Madam President: Minister, you know better than to use words like you are lying across the floor. [*Crosstalk*]

Sen. W. Mark: Madam President, could you tell him to withdraw the statement. [*Crosstalk*] Ask him to withdraw the statement.

[*Madam President pounds gavel*]

Madam President: Everybody!

Sen. W. Mark: Withdraw that statement! Withdraw that statement.

Sen. Dr. Kernahan: You all control that, “nah”.

Sen. Dr. Gopeesingh: Control that lunatic across there.

Sen. W. Mark: That lunatic.

Madam President: Minister, did you say he was lying?

Sen. W. Mark: Everybody heard that.

Hon. Senator: Yes. [*Crosstalk*]

Sen. Montano: Madam President, I said he was lying by omission.

Hon. Senator: "Oooh".

Sen. Montano: By leaving out these words. [*Crosstalk*] By leaving out essential words it becomes a lie. I did not call him a liar. I said he is lying by omission. [*crosstalk*]

Madam President: All right! But you know better than to use—

Sen. Dr. Gopeesingh: He is imputing improper motives now. [*Crosstalk*]

Sen. W. Mark: Madam President, he is imputing improper motives; I ask you to ask him to withdraw.

Sen. Dr. Gopeesingh: Remove that word, lying—[*Crosstalk*]

Madam President: I notice, we have a lot of Presiding Officers in this room here today. [*Crosstalk*]

Minister, I think you know better than to use that word "lying" in whatever context. I will ask you to withdraw it, please, please?

Sen. Dr. Gopeesingh: Take it out. [*Desk thumping*]

Sen. Montano: [*Shrugs shoulder*]

Madam President: Do you withdraw it?

Sen. Montano: Yes.

Madam President: All right, good. Now Sen. Wade Mark—

Sen. W. Mark: Madam President, is that how you withdraw words now? By a man sitting down and saying he withdraws it. He has to rise and withdraw the word. He has to rise and withdraw. [*Crosstalk*]

Madam President: Yes, I agree with that.

Sen. W. Mark: He can apologize. [*Crosstalk*]

Sen. Montano: Madam President, I apologize. [*Crosstalk*] I would withdraw the words "lying by omission". I would replace them with misleading the Senate by deliberately leaving out words in order to impute improper motives to the hon. Attorney General.

Madam President: Okay. All right.

Sen. W. Mark: Yes, thank you very much, Madam President. [*Desk thumping*]

Madam President: On the other hand, Senator.

Sen. W. Mark: Yes, Ma'am.

Madam President: You continue to say "him" with direct reference to the present Attorney General, I would ask you to speak in third party or whatever other terms, in terms of the Attorney General as an office.

Sen. W. Mark: Thank you very much, Ma'am. Madam President, section 15B—

Madam President: The Minister is asking for—[*Inaudible*] Please!

Sen. W. Mark: Am I getting injury time?

Madam President: Please!

Sen. Dr. Saith: I just want to avoid this thing continuing. [*Interruption*] Could I ask, Madam President, if the Senator is quoting a section of the Act and there is not a full stop, quote the whole section. That is all.

Madam President: Yes, I agree.

Sen. W. Mark: But you would not give me a chance. I was continuing.

Madam President: Do not pause.

Sen. W. Mark: Madam President, I was continuing but they interrupted me. All of them! Let me continue! And I seek your protection!

Madam President: Do you want to start at the beginning of the sentence?

Sen. W. Mark: I want to say, Madam President, that it:

> "is obtained by or under the hand of the Attorney General in any matter related to mutual legal co-operation pursuant to the Mutual Assistance in Criminal Matters Act, 1997." [*Crosstalk*] [*Desk thumping*]

So here it is you have the Attorney General, [*Crosstalk*] who is a political appointee, [*Interruption*] obtaining and making documents available of a hearsay nature. Where does that document go to, Madam President? The hearsay evidence document. Madam President, he, the hon. Attorney General would have that transmitted to the Office of the Director of Public Prosecutions.

Sen. Dr. Gopeesingh: And he has.

Sen. W. Mark: Madam President, what this section is doing—and we call for an amendment of this section. We are going to move an amendment to remove this provision of the Attorney General and we want it to be replaced by the Director of Public Prosecutions. [*Desk thumping*] The Attorney General who is a politician should have no business in dealing with documentation of a hearsay nature, so we are going to propose an amendment where the independence of the officeholder of the Office of Director of Public Prosecutions is replaced. We want that position put in and we want the Attorney General taken out from that section!

Sen. Dr. Gopeesingh: That is right. [*Desk thumping*]

Sen. W. Mark: That would give us that sense of independence. Madam President, I want to let you know when—and I want to refer to a judgment, and I think you should get a copy of it. It is in a matter of the *State v. Seeromanie Naraynsingh and Elton Ramasir*, it is dated December 19, 2006. I want you to look at it.

Sen. Montano: What page?

Sen. W. Mark: Page 14 of that judgment. Madam President, hear what it says because of how this Attorney General—not him, it could be any Attorney General. [*Laughter*] How this Attorney General is appointed, what it says:

> "There is no requirement under the constitution for the Attorney General to possess any legal qualification."

We are lucky that this one here was a lecturer at the law faculty.

Madam President: Not this one, this Attorney General.

Sen. W. Mark: Yes, this particular Attorney General. This person called the Attorney General, now. He was formerly a lecturer in the Faculty of Law at the university which he shall soon return to, Madam President, only a matter of time. Madam President, may I continue? [*Crosstalk*]

3.00 p.m.

I want you to listen very carefully to what the judges said:

> "The danger of political persecution or patronage is obvious and that result cannot have been intended by the drafters of the Constitution;"

So they realized that giving the Attorney General the kind of powers that he had before 1962 in the Constitution of Trinidad and Tobago—between 1962 and 1976 the Attorney General was the boss, you know. But in the 1976 Republican Constitution we created the office of the Director of Public Prosecutions and that officeholder is independent of the office of the Attorney General. Right now there is an invasion, I understand, of that office, but we will talk about that a little more.

Sen. Montano: Madam President, again, another statement—[*Crosstalk*] He cannot make those statements!

Sen. W. Mark: I said, "I understand". I did not say it is a fact.

Madam President: Please, Senator, I just corrected him and told him it is the office of the Attorney General.

Sen. Montano: Madam President, he said there was an invasion of the DPP's office—[*Crosstalk*]

Sen. W. Mark: I said, "I understand", Madam President; I did not say it emphatically.

Sen. Montano: That is complete nonsense and he knows it! He must withdraw that. That is complete nonsense and he knows it!

Sen. W. Mark: I said, "I understand", Madam President, and that is correct.

Madam President: If you understand, then you do not know it to be true so, therefore, please—

Sen. W. Mark: Madam President, unless they have other evidence let them come and tell me.

Madam President: Please, Senator—

Sen. W. Mark: That is an okay statement I know—17 years in the Parliament I have known this all the time.

Madam President: You have known it?

Sen. W. Mark: Yes, yes, all the time.

Madam President: Senator, please be very careful of what you are saying. You are imputing improper motives in a very subtle way.

Sen. W. Mark: I am not.

Madam President: You are going about in such a way that it is difficult to point a finger and say you are guilty.

Sen. W. Mark: Okay. Well, I am not guilty. May I continue?

Our illustrious and esteemed Attorney General—

> "The danger of political persecution or patronage is obvious and that result cannot have been intended by the drafters of the Constitution;"

So this panel of very esteemed High Court Judges and Court of Appeal Judges were: Acting Chief Justice Hamel-Smith, J. A. Warner, J. A. Kangaloo—you know him, right?—J. A. Archie and Mendonca. These are the people who made the statements and the Attorney General of Trinidad and Tobago, in the face of this, comes with this piece of legislation, continuing to give himself a certain power and authority.

We are saying that this Mutual Assistance in Criminal Matters Act of 1997 must be amended and the Attorney General must go in this amendment. We are saying the DPP must replace the office of the Attorney General in this matter. That is what we would have done today. We would have amended this particular provision. But when you have, for instance, people with large appetites for dictatorship and fascism, they would not do so, but a democratically-oriented administration would do so. That is what we would have done here today.

Do you know what is more serious about this piece of legislation? We are told here today that it is all about fighting crime and it must not be business as usual and the rights of the citizens who are accused must not outweigh the rights of the citizens who are victims of crime. We have a Constitution. The Constitution is the supreme law of the land and we must respect that document. The Government introduced a measure of serious consequence and far-reaching implications for our country and there is no consultation with the stakeholders in our country. The Criminal Bar Association was not informed about it. They have not received a copy of the legislation. The Law Association was not aware of this legislation. We had to call both the Law Association and the Criminal Bar Association in order to make available to them copies of this legislation which they have never seen. That is an insult, knowing full well that the Attorney General of our country is a lawyer.

Sen. Dr. Gopeesingh: He insults the profession. He should know better than that.

Sen. W. Mark: So here it is, this Bill that affects criminal proceedings in our country and the Criminal Bar is not aware of this measure that is before us.

Sen. Dr. Gopeesingh: And evidence has everything to do with it.

Madam President: Sen. Dr. Gopeesingh, are you—

Sen. W. Mark: This Bill in its current form is going to contaminate and pollute all criminal trials, both at the preliminary level and at the High Court level. Here it is, you would see in 15C after this hearsay document is admitted into the courts of this country via the office of the Attorney General or by the police through the Director of Public Prosecutions—unless it is the AG. He is a conduit to the Director of Public Prosecutions. Listen to what section 15C says:

"Subject to subsection (2), a statement made by a person in a document…"

That is the hearsay, you know, Madam President. I will tell you a number of things I heard about the Attorney General just now. I heard a number of things about him.

Hon. Senator: Hearsay.

Sen. W. Mark: Hearsay! I want to show you the danger of hearsay. I heard about the Attorney General's activities; I heard about Hazel Manning's activities too.

Madam President: Sen. Manning.

Sen. W. Mark: Sen. Manning; I heard about Sen. Dr. Lenny Saith—hearsay!

Hon. Senator: You "ain't" hear about me?

Sen. W. Mark: You coming! I want to demonstrate to this Senate today the danger of hearsay evidence that our Attorney General, who is supposed to be the guardian of our Constitution, is seeking to defend and advance. Go to section 15C:

"…a statement made by a person in a document…"

Not "may", you know, Madam President; "shall". So the DPP must accept the document that the Attorney General is sending to his office. It is no discretionary power here. He must accept it.

"shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person—

(a) is deceased;"

We were told that these statements are unsworn statements; these statements that people are making against Wade Mark or the Attorney General or Sen. Hazel Manning or Sen. Dr. Lenny Saith, would be unsworn statements which are contrary to section 40 of the Preliminary Enquiry (Indictable Offences) Act, section 40(1) and (2).

I disagree fundamentally with the Attorney General of this country when he says that this Bill does not contradict, violate, contravene or aggravate the rights of the citizens under sections 4 and 5 of the Constitution. [*Desk thumping*] The Attorney General told this Parliament that it does not violate sections 4 and 5. Go to the Constitution. It says at 4(a):

"the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;"

What this Attorney General and this PNM Government is attempting to do is to violate the Constitution of our country! [*Desk thumping*] We cannot be party to that!

I refer you to section 5(2) of the Constitution. It says:

"Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;"

That is in the Constitution! Do you want us to sit here this afternoon and agree to that kind of legislation that is going to deprive a citizen of his fundamental rights to a fair trial?

Let me explain. I am not a lawyer but I like law. Do you know what I understand by "fundamental justice"? It is the right of an accused to confront his accuser. I have a right as an accused to confront my accuser and, most importantly, I have a right to cross-examine my accuser in the courts of Trinidad and Tobago. So how can you have legislation that does not give me the right to confront my accuser?

Somebody says that the Attorney General got a free car from Mc Enearney/Alstons in December. That is hearsay evidence. You think I could believe that? I throw out that! I could not believe that you accepted a gift from McAl. I say that is hearsay evidence! How can I believe that? I cannot believe that! Madam President, you could imagine that I could go and give a statement to the police on hearsay evidence? The Attorney General is in jail! I am showing you the danger of this legislation.

I hear that the hon. Sen. Hazel Manning, when she was the Business Development Manager at the Piarco Airport/Project Pride, accepted $10,000 that you were not entitled to. That is hearsay. I got that in a mailbox! I throw that; I burn that! I cannot bring that to you! Because I do not believe that, Hazel—

Madam President: Sen. Manning.

Sen. W. Mark: Sen. Manning. I do not believe that, but I am telling the Attorney General the danger of this matter. You cannot do that! [*Desk thumping*] You think I could go to the police and give them a statement on the AG or on the hon. Senator? I cannot do that!

Sen. Jeremie, S.C.: Senator, for my part, I have worked for everything that I have and if you have any evidence, hearsay or otherwise, I want you to carry it to all the authorities.

Sen. W. Mark: No, I did not believe that. That is why I said I just dumped it. When I got this thing in a letter, I dumped it.

Hon. Senator: He burnt it already.

Sen. W. Mark: I burn that! I do not believe the Attorney General would do that. He is an honourable man.

Madam President: Senator, I think you brought enough examples of hearsay. I will caution you on bringing anymore, please.

Sen. W. Mark: Okay, Madam President. You see, I am demonstrating to you that you yourself could be in trouble and I have to defend you.

Madam President: Yes, thank you.

Sen. W. Mark: Madam President, this is a dangerous piece of legislation. [*Desk thumping*] We cannot support it in its present form. We would like to support legislation to fight crime on a genuine basis but not at the expense of depriving the citizens of their fundamental rights and freedoms. Anybody in this

country, whether you are an ordinary citizen or whether you are a politician, could become a victim of this legislation, and that is the danger of it.

In their desperation to tell the country they are doing something about crime, six months or eight months to go before a general election, they are prepared to bring to this Parliament legislation to just take away people's rights, or undermine people's rights. Cliff Abraham was killed. The family said he was innocent, but he was just in the wrong place at the wrong time and they are asking the police to clear his name. But that is hearsay. I do not know, but that is what they say.

Let us continue. Go to clause 15C with me again. I am on a journey here today. We are on a journey but we want to end up by a precipice because this Bill must go down the precipice. It is of no value to this country, except the Attorney General of this country who has, maybe, an agenda that we will certainly expose shortly.

I saw Dr. Rowley here today and for the first time he was most distinguishingly—not only dressed, which he normally is, but I saw no PNM tie for the first time. He has gotten the message that the Attorney General and the Minister of National Security are out to get him, so he is starting to separate one time.

Sen. Montano: Madam President—

Sen. W. Mark: Madam President, I withdraw it "one time". I withdraw it immediately.

Madam President: Sen. Mark, you are really disturbing me today.

Sen. W. Mark: Sorry, Madam President. That is what is being rumoured, "eh". I did not say so. It is hearsay. I am hearing all this hearsay thing about this. But anyway, let me continue.

Sen. Dr. Saith: Madam President, I just want to make a comment. I understand why Sen. Mark is so concerned about hearsay, because over the years his whole contributions here were hearsay. [*Laughter*]

Sen. W. Mark: Madam President, this is my good friend. The number of things I hear about Sen. Dr. Saith, I would not tell you. I will tell him on another occasion what I heard about him, and the AG is aware of what I heard already because I told him. He knows! But we will write to the Director of Public Prosecutions on that one. I would not deal with that now; that would come on the heat of the election campaign in this country. [*Desk thumping*] There are some things that we save for last. As we are going down we will raise them.

Let us continue. You could imagine somebody accuses you or anybody else in this Senate, of some act; it is of a criminal nature, and listen to what an Attorney General in the year 2007 is proposing to this honourable Parliament: That person is not bound to come to the courts of this country because he is dead. All right, he is dead, so we cannot bring him; we could understand that. Somebody dies so you cannot bring the person. Listen to what is happening:

"is unfit, by reason of his bodily or mental condition, to attend as a witness;"

So he was mad in the first place and he gave hearsay evidence. So it is a mad man you take evidence from to come and prosecute me! He is mentally and physically off, you know, and he cannot come to court. One could understand that. He is in the madhouse; you cannot bring him out, but you bringing that "fella's" documented evidence to say I must go down to the slammer! That is what the Attorney General is proposing. Madam President, somebody accuses you and me and any other Member here—Arnold Piggott, the hon. Senator, former Ambassador; they come and they accuse you of certain things I would not reveal now, but I will tell you privately. You know how many things I heard about Arnold Piggott? Hearsay! And it happened outside of Trinidad "eh".

I continue. Section 15C(c), the person who accuses you:

(c) is outside of Trinidad and Tobago and it is not reasonably practicable to secure his attendance;"

So somebody "gone" on a boat cruise in the Mediterranean and they say: "Do not be available, eh. Go on a boat cruise. We are paying for you." Because the Attorney General wants to convict Wade Mark, so he set up somebody to say something about me and then he pay the man to go on a Mediterranean cruise so they cannot find that fellow at all. But do you know what? My information is that they "does" write statements for you and then let you sign it. I do not know if the Attorney General is aware of that. I hear they "does" write statements; prepare it for you and tell you to sign it after. I "ain't" saying that the Attorney General does that, you know; I am saying that is what "does" happen.

Sen. Montano: Who is "they"?

Sen. W. Mark: Not you. You "doh" worry about that. I say "they".

Sen. Montano: Who is "they"?

Sen. W. Mark: It "ain't" you; you sure about that.

Sen. Montano: None of us on this side.

Sen. W. Mark: None of you all on that side so far.

Can I continue? So here it is I am set up good and proper. My "coo-coo cook"! And when I want to find my accuser, they cannot find him because he is in the Mediterranean on a cruise. And do you know what?

"it is not reasonably practicable to secure his attendance;"

Sen. Dr. Saith: The court will judge.

Sen. W. Mark: A court? Where you have fired a Chief Justice and you want to give your cronies in charge of the Bench?

Madam President: Senator, come back to the Bill.

Sen. W. Mark: Madam President, let us be serious—

Sen. Jeremie, S.C.: Madam President, that is offensive to the Standing Orders—

Madam President: Is it a point of order?

Sen. Jeremie S.C.: Yes.

Madam President: What is your point of order, Attorney General?

Sen. Montano: Madam President, that needs to be struck off. Standing Order 35(a) says the conduct of Members of Parliament cannot be brought into question like that. The conduct of judges, the Attorney General, you cannot do that! He is at it again! He must withdraw that! It must be struck from the record!

Sen. W. Mark: I never said that, Madam President. He is interpreting what I said. I never said that, Madam President.

Madam President: You did say that they removed the Chief Justice—

Sen. W. Mark: But that is a fact.

Sen. Dr. Gopeesingh: Yes, not them.

Madam President:—and something else—

Sen. W. Mark: That it a public thing, Madam President; you know that.

Hon. Senator: He said, "fired the Chief Justice".

Sen. W. Mark: Whatever it is. It is public knowledge they fired the Chief Justice. I mean to say, it was in the newspapers.

Madam President: Hon. Senator, they did not fire the Chief Justice.

Sen. W. Mark: Not him, the administration. I did not say him; I said it is the administration. Madam President, may I continue?

Sen. Dr. Saith: Madam President, it is easy to get the Hansard reporter to repeat it. He made it quite clear: "You (pointing to this side) fired a Chief Justice and put in your cronies in the Judiciary." There is no hearsay about that one. That happened. Withdraw it.

Sen. W. Mark: All right. Madam President, I withdraw. It was not you; it was the administration.

Hon. Senator: No, that is wrong.

Madam President: Are you withdrawing that statement?

Sen. W. Mark: Yes. I said it is not you. He says it is all of them. I say it is not "all yuh"; it is the administration.

Madam President: What administration?

Sen. W. Mark: That is almost like an amorphous saying. It does not refer to them. Why are they so touchy?

Madam President: Please, Senator, please—

Sen. Dr. Saith: Madam President, the administration is not an amorphous thing.

Sen. W. Mark: I withdraw it.

Madam President: You have withdrawn that statement—[*Crosstalk*]

Sen. W. Mark: Yes. It is not them—

Madam President: I expressly note that that statement was withdrawn.

Sen. W. Mark: Madam President, it is not them; it is the UNC who fired the Chief Justice. [*Crosstalk*] It is we who fired him.

Sen. Montano: On a point of order. He is doing it again. Nobody has fired anybody! That is grossly misleading and it is completely contrary to Standing Order 35(c).

Madam President: Nobody fired the Chief Justice and I quite uphold that. I uphold that, that nobody fired the Chief Justice. It is a matter that is right now in the legal system. So please withdraw that.

Sen. W. Mark: Okay, Ma'am. So he was removed. He was not fired; he was removed.

Madam Chairman: Temporarily.

Sen. W. Mark: Temporarily, all right. Well, he was removed.

Madam President: Senator, please take your seat. 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. Dr. T. Gopeesingh*]

Question put and agreed to.

Sen. W. Mark: Madam President, I have now started. I need another two hours to deal with this regime. Go to section 15C(d). If they accuse you or me, listen to what they are saying. They are entertaining that hearsay evidence in documentary form because this person who has said that about me:

"cannot be found after all reasonable steps have been taken to find him;"

So somebody can make a statement to the police on a hearsay basis about you or me and do you know what? After that person makes that statement there is no witness protection programme. This person is loose. They send him abroad; they hide him in the Middle East or somewhere in Latin America; they cannot find him. So do you know what would happen? I go before a judge or a magistrate or a High Court and the decision to determine whether this document, based on hearsay, is to be accepted, is dependent on the weakness or the strength of a judge.

Under the Constitution of Trinidad and Tobago today, I do not have to depend on that. Why must I give up my right today in order to put it in the hands of a judge? Why must I give up my right to give it to a magistrate? Right now I have the right under the Constitution to a fair trial. I have a right to confront my accuser; I have a right to cross-examine my accuser with my lawyer. But you want to take away that right from me and tell me you are giving it to a judge and my rights are protected? How can you be so insensitive to the rights of the people? [*Desk thumping*] Could you imagine this Bill in the hands of a fascist? Could you imagine this Bill in the hands of a dictator? Could you imagine this Bill in the hands of a blood-thirsty Dracula? Do you know what is going to happen? Every single Member of this Parliament could be set up and sent to jail, including Sen. Danny Montano. Any one of us could be set up!

This is dangerous legislation! Can you not see that on the other side? Can you not see what the hon. Attorney General of this country is attempting to do?

Sen. Dr. Gopeesingh: Or his office.

Sen. W. Mark: Or his office, I should say. It goes on at (e):

> "is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person."

What does that mean? Somebody comes and tells something about me; I did something; Wade Mark did something; the Attorney General's office wants to get me "bad" and do you know what they do? They fix up this chap; they send him to Miami; he cannot be seen. He says: "If I come here, Wade Mark have a gang to kill me. So you know what happen? I cannot come." But you know what he does? He gives a statement—hearsay—and I cannot cross-examine that "fella"? I cannot confront that "fella"? We are not living in a fascist state; we are living in a democratic republic and it shall remain a democratic republic so long as the UNC is in Trinidad and Tobago. [*Desk thumping*] We are not going to allow the PNM and the Attorney General to just take away the rights of the people like this.

Let us go quickly to section 15(2). Look at this. To tell me and this nation that after this miscreant who gives evidence that is a lie about me—

Madam President: Untruth.

Sen. W. Mark: Untruth—they are telling me I have 21 days. They "done" put the untruths, you know, and they are giving me 21 days. "That doh make no sense." And this so-called cosmetic amendment that the Attorney General circulated a short while ago is a waste of time. It does not address anything. The Attorney General must be out. He is a politician. Listen to what he says in the amendment:

> "It is hereby declared that in any criminal proceedings or preliminary enquiry the court may…"

Why are you giving the court this power when I already have the right to cross-examine my accuser? You are giving the court a power I have. I have—you enjoy that. If you are going to take that away from us you must pass this Bill with a special majority. You cannot just pass a Bill like this and tell us that we must support this.

"and may exclude evidence if in the opinion of the court…"

So let us assume, but not admit, we do not have strong judges in our courts, because the times are changing and we have weak judges in our courts, you would be at the mercy of a judge.

Sen. Montano: Madam President, I beg your pardon—

Sen. W. Mark: Madam President, I am saying if; I am not saying—

Madam President: Please, let me hear what the Minister is saying. Is it a point of order?

Sen. Montano: Yes, a point of order, Standing Order 35(a). The behaviour of judges cannot be called into question here and by suggesting that if we do not have that and if we do not have the other, is outrageous, and he knows it. He is bringing disrespect on the judicial system! [*Crosstalk*]

Madam President: Okay, Minister. He said in a general term that times are changing and there is that possibility. He is not referring to any particular judge there now. However, I uphold that you should not bring judges into your discussion.

Sen. W. Mark: I am not bringing judges, Madam President. I was just saying that let us assume this matter and what would happen to you or me. You see, he will leave Trinidad and Tobago on his yacht, you know. He does not have to stay here! I have to stay here! I was born here; I am living here and I will die here! I am living here and I am defending the rights of the people. When I speak here I speak for 1.3 million people who cannot speak for themselves!

3.30 p.m.

I am not going to allow this Government through the Attorney General to bring draconian legislation to impose, hijack and imprison the rights and freedoms of our people in this country. We have made it very clear to this Government that all this is a waste of time. They are trying to hoodwink the people.

Do you know what is the real catch? Go to section 15A. He has a plan. Sometime ago he told me across the floor that he had a plan. I now understand the plan that he has. Madam President, do you know what this plan is? [*Interruption*] Not you. I did not refer to you. "Why yuh so touchy? I am not talking about none of you." I am talking about Timhe. Why all yuh so jittery?"

Go to section 15E and that is it. The whole catch in this Bill—Gutierez and a "fella" called Burke Hillman in jail. They could release them to come to give

evidence but they do not want that. Do you know what this is about? This is about persecution, prosecution and harassment of the political Opposition by this Government. "Dey want Carlos John, bad. Dey say dat he pave road and he cyah come." They put an auditor general to do a report. They want Jack Warner, bad; they want Manohar Ramsaran, bad.

Do you know what is going on in this clause? They can get anyone to give a hearsay statement about Jack Warner, Basdeo Panday and Carlos John and the next thing you know, they are before a court. This is a dangerous piece of legislation. Why did the Attorney General refer to section 15E? Why did he say that he wanted it to be under the Preliminary Enquiry Act? If it is not of an evil intent we call on the Attorney General to delete that section from the Bill. We know that he would not do it because that is his intention. My dear Sen. Hon. Danny Montano, you know that? Sen. Montano?

Sen. Montano: Madam President, he has said clearly that the Attorney General has an evil intent with this clause. How can he say that? It is completely outside the Standing Orders. He must withdraw that. It must be struck from the record. After 17 years he should know better.

Madam President: How many times do I have to stand and say that both of you cannot be standing at the same time? The two of you seem to make a habit of doing this. When one stands, the other does not sit.

Sen. W. Mark: Whenever I am on my legs he likes to stand too.

Madam President: You can continue. I would let that go by.

Sen. W. Mark: Madam President, the Bill puts the burden of proof on the accused.

Madam President: You have three minutes.

Sen. W. Mark: Will you believe that this Bill will turn the principle of our democracy insofar as a person is innocent until proven guilty, upside down? This Bill would now say that you are guilty; you must prove your innocence.

We on this side of the Senate cannot support the Bill in its current form. This Bill requires a special majority because it infringes sections 4 and 5 of the Constitution. There are provisions in this Bill that we would like to have deleted. We will move the amendments at the appropriate time. The Attorney General must be removed completely out of this Bill. We must replace him with the office of the Director of Public Prosecutions (DPP). We do not believe that it is necessary in its current form.

We believe that what is required is more resources for the Judiciary. We want more resources; the building of more court houses; more judges to the Bench and not cronies. We want fearless, impartial and independent judges on the Benches of our country. If we do these things this Bill would not be relevant and necessary. In its current form this alternative government that is hungry for power—we are going after you with everything at our disposal and would get rid of you in legal terms at the appropriate time. We cannot support this Bill. We call on the Government to do two things; either withdraw the Bill or have it referred to a Special Select Committee of the Senate so that we can go through it thoroughly, so that we could ensure that the rights of citizens are balanced against those victims of crime. I support the Attorney General on these matters in terms of the criminals and victims. We must balance it in such a way that the rights of the citizens are safeguarded and protected.

Thank you very much. [*Desk thumping*]

Sen. Dana Seetahal, S.C.: Madam President, this Bill which proposes to amend the Evidence Act is seen by the Office of the Director of Public Prosecutions as a welcome addition to the criminal evidence law. I have been informed of this by that Office up to today. The Office supports the three sections from 15C to 15E. In relation to section 15B, the clause dealing with MLAT evidence, they do not have any strong views opposing it and that is from the Deputy Director. That is strictly a specific type of provision only in relation to a specific type of evidence.

Let me say at the onset that the Bill really deals with two kinds of evidence; the admission of evidence in general, sections 15C, 15D and 15E and the admission of certain documents given by foreign witnesses. That is the only provision that deals with the Attorney General. We have to make that clear at the outset. The other provisions in section 15C to 15E deal with general law and nothing to do with the Attorney General is included there.

Having said that, let me say at the outset that from the exchanges among Senators during the contributions of the two previous Senators there appears to be a confusion as to what is "hearsay". I take advantage of having taught the course of evidence at the Hugh Wooding Law School to define that term. "Hearsay" is not rumour. "Hearsay" is not something that somebody told you and you told somebody else. That may be defined as "multiple hearsay". Hearsay is simply an out of court statement. It is defined in the cross on evidence and is repeated in the Archbold which is the Bible of criminal law and practice and law and evidence.

If you had said something outside of a court, that would be a hearsay statement, if you chose to repeat what you said in court. Anything said by anyone whether or not a witness in the proceedings out of court, it is hearsay. We need to get that very clear. I follow that by saying that when it is said that this is the introduction of hearsay evidence making it admissible for the first time, that is not really true. I do not blame people who are not lawyers for making that mistake. People may not know that a confession of an accused is hearsay. It is hearsay because it is given out of court. Any statement he made out of court is hearsay but it is an exception to the hearsay principle that no statement made out of court can be given in evidence in a court of law. It is an exception to that just as these provisions are exceptions to the principle.

Another exception is some documentary evidence. Do you know that a birth certificate is hearsay evidence? It is evidence of the birth like a marriage or death certificate of the marriage or death of a person. That is from evidence out of court. Records of a business are admissible in court but they refer to matters found outside of court. That is a normal exception to the hearsay rule. That is the kind of evidence that is often admissible in fraud cases. Somebody from the Inland Revenue Department or the bank comes and looks at the records and states what is contained there. Based on those records you are supposed to deduce whether or not there was an embezzlement or something of the kind. All these are exceptions to the rule against hearsay. I hope you understand that.

I move on to concentrate on this specific provision. Many Senators may recall the trial of Dole Chadee in 1996. The former Attorney General, Ramesh Lawrence Maharaj S.C. took some credit internationally for bringing these perpetrators to justice. He based that on the Jury (Amdt.) Act and so on. At the time someone on his behalf sought to say that he amended the law to allow the evidence of a deceased witness to be used and therefore, they were able to convict Dole Chadee. I remember a PRO of the PNM writing to the media and saying that was legislation passed by the PNM. We had that legislation which allowed dead witnesses' evidence to be used. I then wrote to say that neither the then government, the UNC nor the PNM passed that legislation. We had legislation which is now in section 39 of Chap. 12:01 of the current law which since 1950, allowed the evidence of a dead witness who had given a deposition in the Magistrates' Court to be used at a trial.

That was hearsay and is hearsay evidence, but it is admissible. It is admissible under section 40(a) where the witness is proved at the trial by the oath of credible witnesses to be dead, or to be so ill as not to be able to travel, or incapable in

consequence of his condition of mind of giving evidence, or absent from Trinidad and Tobago, or kept out of the way by the prosecutor, State or the accused person. Those are the circumstances under the current law in which evidence of a statement made by a witness can be used at a trial. The limit to that is that that evidence would have had to be given in the preliminary enquiry.

This Bill seeks to extend the law so that a witness who has given the police a statement but has not yet given evidence at a preliminary enquiry, his evidence can be read out if it is proved that he falls within the provisions of the Act. In a nutshell that is what most of the provisions here deal with. In my view that is an advantageous piece of legislation. It is not so novel that one can say that it affects rights in ways that have never been done. It is something that develops the law and forestalls the frequency of witness intimidation and the elimination of witnesses.

I say that because in 1989, there was a Privy Council case of Barnes in which the issue went to the Privy Council as to whether or not witnesses' statements, depositions could be put in evidence where they were dead by the time of the trial, often eliminated. This is a Jamaican case. It happened very frequently during the 1980s where witnesses gave evidence at the preliminary inquiry; they were then killed and at the trial the argument was that you should not put their depositions because it would be prejudicial to the accused, he would not have a fair trial. The Privy Council said then that there is law. You follow the law. Ensure that there are safeguards. What are the safeguards? The jury must be warned that this witness could not be cross-examined. In other words, the accused could not face his accuser. Once you give the required warning and if it is a case of identification you balance the scales, the evidence could go in. That case was an identification case and the evidence went in.

After that case it was found in Jamaica that the incidents of witness elimination went down because there was no way—If you eliminate the witness it means that you would not get a chance to cross-examine him and his evidence would go in.

In the Clint Huggins matter it was a murder where the persons who planned and carried out that murder were convicted and lost the appeal. We can talk about that case. In the course of the trial of that case it was revealed that the accused in the Dole Chadee's matter, then the convicted people offered $3 million to the family of this witness. He had given evidence by then in the preliminary inquiry. They offered $3 million to take care of him. His cousins felt that $3 million was enough and took him opposite Mount Hope, shot him and had him burnt.

Unfortunately for them however, at the trial despite objection his evidence was read out. The judge gave the required warning and we know what happened. The point about it is that if section 40 had not been in place it is unlikely that the jury might have been convinced only on the evidence of Levi Morris who was then charged and pleaded guilty with the other accused. You would have had a difficult time. In summary this law is not unusual, it goes one step further.

It is the one step further that we have to look at. Sen. Mark raised the issue of due process and confronting the person who is making allegations against you. Before we go there I think it is important to consider, yes, this would be unsworn evidence because it is a statement. The person has not had the opportunity as yet to give evidence. That is the point about it. If he had the opportunity to give evidence you would not need the law. Having realized that once witnesses give depositions, that can go in at a trial, the criminal elements have taken to eliminating the witnesses before they give any evidence at the preliminary inquiry. In other words, the step in terms of getting rid of these witnesses has gone earlier. With that, the legislation and the law, we must keep in touch with the reality.

The DPP's office will tell you that last year in at least half of their cases witnesses did not give evidence because they were afraid to give evidence or they could not be found. I am not talking about family cases where they "make back up" or they feel sorry for the relative. I am talking about straight cases. I know this for a fact. It is something that every week you saw the State closing or the man being acquitted and people saying that they were going to church but the next two weeks they were committing robberies. That is all too frequent. In the recent incident which is reported all over, two of those persons, as the Attorney General mentioned, had been before the courts more than once for capital offences. Now that they are dead and there is no defamation, you cannot defame a dead person, the police would tell you that they were suspects in 20 matters. It is not surprising that witnesses in those cases would not come forward.

That is a serious problem with which we are dealing. People will tell you and I dare say even Senators here—I have had discussion with some people—that if their families were to be attacked or kidnapped not just robbed, they would have issues about whether to give evidence because they do not know what would happen to their children or families, or they may want to leave the country. I remember about 15 years ago in the case of Torrel James, there was a national cricketer from another country who came here and married Torrel James' previous common law wife. On the night of the wedding this person, Torrel James broke into the house chopped him and the wife because she had married

another man. There was one woman—no wonder why she left him in the first place. That is not the point. He was charged with attempted murder. This new one day husband was so horrified he went back to, I believe India or Sri Lanka never to return to this country because I guess he would think what kind of crazy country this is. You are married; you are there at home with your wife and everything is going fine; a man breaks into the house and a police officer at that and chopped her across the mouth. The fact of the matter is that there are incidents like that where foreigners or other people are attacked seriously or might be kidnapped or anything could happen to them and they want to go to the safety of their country. You must make provision in the law for tourists.

The problem here is one of intimidation and creating fear. People can say they are afraid and leave but the current common law contained in Archbold 2006 at paragraph 1115 and continuing shows that these accusations cannot be made willy-nilly. It is common law; we do not have to put it in legislation. It says that the witness himself or herself who is supposedly afraid or intimidated ought to give that evidence and if the witness does not want to give it in court, clearly he should give some information preferably a recorded statement saying I am not giving evidence; I am afraid or sworn to before a notary public abroad. The magistrate or judge would have an enquiry to determine whether there is a fear. These things you do not need to put in legislation because it is the current law that whenever there is an issue as to the admissibility of evidence such as a deposition and there is a challenge, you have a voir dire. It is an enquiry to determine whether or not a case is made out to allow that evidence. In Archbold provision is made to recognize that. There must be a requisite factual foundation made in order to determine whether the fear factor is made out and the judge should conduct a trial within a trial to determine this.

The law also provides that the jury if it is a jury trial, or a matter where the magistrate at the preliminary enquiry lets in statements and then they go towards the jury. The jury should be warned especially in a case where the evidence in the statement is disputed that in assessing the weight of the evidence they should take into account the fact that unlike other evidence given orally, it would not have been given on oath or affirmation. It is unsworn evidence but the jury is reminded and told bear this in mind when assessing its weight. The jury is also told that this has not been the subject of cross-examination and of the circumstances in which the statement was made. The judge must point out the particular features of the evidence in which there is conflict between the two. In the common law there is provision already because the English have the same law and their case law is developed to ensure that the accused is treated fairly.

Some of us have concerns about the fairness of the trial of a person when you have this legislation. Be assured that there is provision in the law and safeguards which the jury will have to bear in mind. They would have to look at the evidence and consider when it was made. Was it immediately after the event when it is less likely that this person would have made up something? The law is that you can have a dying declaration into evidence. It is hearsay on legal and civil declaration. Bear in mind that at present the law is that a dying declaration can go into evidence. Is that not hearsay? It is hearsay on all counts. It is hearsay on the civilian definition of hearsay and on the legal definition. It is a statement out of court, the person says and it would be repeated by another person. I went to the hospital and he said, "I knew I was going to die. I have no expectation. It is John who stabbed me in the back." Sorry, "it is Thomas who stabbed me in the back". (No John intended.) That would be called a dying declaration and would be admitted as evidence of the truth. Because of the circumstances in which it was made, the court will say, members of the jury consider whether it is not likely to be more true than not. Then they would be warned about not being subject to cross-examination and you cannot face your accuser. There is provision.

Apart from the common law this Bill has four other safeguards. The general safeguard is only with leave of the judge; this statement given by a witness who does not come once he is dead, unfit or afraid. The judge must give leave and he exercises that in the normal way which would be in terms of what is fear. If that person in his statement said certain things and you as the defence normally would have been able to rebut that, clause 15D says that you can still do that. You can call rebuttal evidence. It also says that if you could have put matters in cross-examination to the witness, that John says you were not there; you did not see anybody stabbed in the back; you can bring witnesses whom you would not normally be able to bring to say that. That is another protection. Specifically, the judge must point out anything in the statement where the witness contradicted himself intrinsically or where he is contradicting another witness giving evidence. Those would be the safeguards which have been considered enough by the Privy Council in the Grant case.

This is not a new thing. England had it in 1998 and they had previous law. In 2003, they redefined the law. Jamaica introduced that law and it has proved to be very successful. In today's world where witnesses—it is like a fashion. Everybody is now afraid to give evidence. I remember years ago, I had a 12-year-old witness. Somebody broke into her house and raped her in her house. She

gave the evidence. She went to St Joseph's Convent; she was a bright little girl. She came to me after and asked why this and that happened. She gave the evidence with no problem. Around the same time a few years ago there was a lawyer who said a few years after that that he was not coming to give evidence because he did not want to touch anybody in an ID parade. You have to see him in court anyway.

4.00 p.m.

The point is many people are claiming intimidation. It could very well be that some of them take money, I do not know. It is not an unreal situation. That is why you have an enquiry, you determine this and then you have the evidence. If you find out they took money, you could charge them for perverting the course of justice. But we cannot have the paralysis now of the judicial system, where the criminal elements are acting with impunity, threatening witnesses and laughing their way out of court, proclaiming their innocence when they get off. We know they are not innocent, but on paper they are, and they can do that. Every time you get away by intimidating a witness it means the next time you will get away because you have a reputation; you are a big, bad soldier; you are a big bad criminal and, therefore, desperate times calls for sensible measures which may be seen as extreme in other times, but you have to deal with the law as is.

Madam President, here is a good example of dealing with situations where either at the preliminary enquiry stage or at the trial stage, there are witnesses who cannot come to give evidence. Today in the Magistrates' Court, this is at the preliminary enquiry so that means there is no evidence on oath, a prosecutor is telling the magistrate: I can proceed no further in this case because the two key witnesses who are Nigerians have gone home and they have indicated that under no circumstances they would be returning to give the evidence in a capital case.

I thought it was very odd that that should happen right in front of me and here there is the law that can deal with it. They have gone that way back, even if the State pays their fares they are not returning and that means that the case will be considerably weakened. I will not mention the name of the case, but the case for the State is considerably weakened as we speak because of that.

Madam President, there is a draft amendment which has been circulated and there is a proposal that we include in this legislation, the provision:

> "It is hereby declared that in any criminal proceedings or preliminary enquiry, the court may exclude evidence if, in the opinion of the court, the prejudicial evidence of that evidence outweighs its probative value."

I believe the intention of the Government may have been to allow the courts to have leeway in terms of whether it should accept the evidence or not. But this provision applies not only to evidence admitted under sections 15C and 15D, it will apply to any criminal proceedings. As drafted, it means that in the current preliminary enquiry a magistrate can look at it and say I think this evidence is more prejudicial even though it is a murder which will be tried before a judge. And normally the question of whether evidence is more prejudicial than probative in a murder case, it would be before the judge and jury, such as a confession. Confession is always admitted at the preliminary enquiry and at the trial and there is a determination. Now, there is this provision enabling this. I do not know if the Government intended this provision to be as wide as it is, and, therefore, it should be stated somewhere that related to the clauses we are talking about—there is a similar provision to that, actually in England, but they do not state it in that way. It is stated like this:

> Leave may be given by the court for the statements to be admitted in evidence only if the court considers that it ought to be admitted in the interest of justice having regard to its content and so forth.

That is another way of saying the same thing. But as drafted now, it is much too wide because it will apply to all other proceedings and we do not want that. At least, I would not want that, and I do not think any defence counsel would want it. I do not think any prosecutor would want it, and it ought not to be.

Madam President, in terms of the question of the replacement of the Attorney General and the Director of Public Prosecutions and section 15B which is truly in my view, it appears to me anyway, the Opposition, through Sen. Mark, seem to have some problems with. Section 15B, I repeat, relates only to MLAT evidence. It is clear as is drafted.

Under the Mutual Assistance in Criminal Matters legislation which is Act No. 39 of 1997, and which I have used in matters I have done, and many people, there is provision at section 7:

> "Where there are reasonable grounds to believe that evidence or information relevant in any criminal proceedings may be obtained, if, in a Commonwealth country—
>
> (a) evidence is taken from any person;
>
> (b) information is provided;

(c) judicial records, official records and other records, or documents or other articles are produced or examined;

a request may be transmitted requesting that assistance be given by that country in obtaining the evidence or information."

So there is provision here for a request from Trinidad and Tobago to certain countries, I think there are about 12 countries, and then they will provide the documents or records to Trinidad and Tobago as happens currently because MLAT, just as extradition matters, it is Government to Government, the authority that deals with it is the Attorney General and not the DPP. That is why you have that in extradition matters. When you come to local prosecution, it is the DPP and when one is talking about the question of the AG/DPP issues, that has to do with local prosecution and the case law currently dealing with that—and that is where you are talking about prosecutions locally. And whatever views I may have and the Attorney General may have, and whether they differ or not, to me that is not relevant to this clause because this clause is dealing with where evidence is already obtained in the statement form through MLAT, through the treaty you will have with that country. Here is the document, here is the record and, here are the judicial proceedings that you need to put in a case.

The evidence will be put in the normal way, in the court through whoever is prosecuting, before a magistrate or a judge and then they will decide whether or not the evidence should be admitted. That evidence will only be admitted if it is the best evidence and the only evidence. That is what this section says. And it says only if the document—this is for document—is the best or only evidence of that conduct. If you have evidence otherwise, it will not be admitted—you will have to get other evidence.

Madam President, this provision can be used so you would not have to bring witnesses unnecessarily. The court, if the witness is contentious, could say we think that the best evidence is available from the witness himself. We want the witness because he needs to be subjected to cross-examination. But if you are dealing with a death certificate or whatever—it is an official record, then is it necessary to have somebody come from Trinidad and Tobago to put in that document? One should bear in mind that any court retains the ultimate power and can refuse to admit evidence. Evidence being admissible means in law it is admissible, but it may not be admitted if it is unfair to the accused. And that is the point one has to remember.

On the question about the replacement of the AG by the DPP, I think I need to mention something here in terms of fairness. It was stated possibly in passing, *en passant*, by Sen. Mark that the AG wants these powers and allusions were made to him never having appeared in court and he has his S.C.

I do remember the Attorney General appearing specifically in certain matters with Lloyd Barnet—in constitutional matters. So it is totally untrue to say that he did not appear in matters. He may not have appeared in criminal matters. There are some matters that get more prominence if you have certain attorneys who know how to get prominence. It may be that he did not know or he did not want to. But the fact of the matter is, there are matters, proceeds of crime and those kinds of issues that are out of my normal ken, but I do know that he appeared in those matters because colleagues of mine have talked about it. That is really not too significant here. I thought I should mention it because I know personally and it may be that others do not know that. It would have been remiss of me not to say anything.

Madam President, I think I have dealt with everything that I wanted to deal with in terms of this legislation. I was fortunate enough to have a look at it because the DPP's office had a look at it as well and it struck me that the three sections were identical to this.

I have a copy here if anybody wants to look at the English equivalent and what the English courts have defined as unfit, what the English courts have talked about in terms of a witness in fear and all of these matters. So it is a good thing that we have drafted something in our way but which is similar to theirs to show that we can look at what they have done and what safeguards they have in terms of the MLAT section which is in their law as well but not in this Bill. This being an amendment Bill, they have put the two together but that really relates to specific documents only in term of foreign evidence and it would relate only to matters where you have foreign evidence. The bulk of our cases, Madam President, the regular murder, kidnapping, robbery, wounding and larceny, the witnesses are witnesses who are here; the witnesses are not just witnesses who are here, the witness records are from here, the documents are documents from here.

If a witness gives a statement here and goes aboard and refuses to come back he would not fall under clause 2, because the statement would have been given here. But if you are talking about foreign banks I expect, and they have bank records there, then this clause would kick in and that is a totally different thing where you would allow—[*Interruption*] It is totally separate because it is drafted in totally separate sections. The first MLAT section relates only to allowing

documents or a document which is obtained through MLAT, meaning it is obtained from abroad to be admitted here without the necessity of calling the witness if that is the best evidence only for that kind of unusual situation.

The other sections 15C, 15D, and 15E talk about all criminal proceedings, whether it is before the person has given evidence at all in the Magistrates' Court it is a preliminary enquiry, if it is a summary matter before he has actually given any evidence in a normal matter, or if it is a trial where he has given evidence at the preliminary enquiry, but where you cannot find him, he is kept out of the way.

Madam President, the final point to be made, even in matters such as the Clint Huggins matters, let us say—when I say Clint Huggins, I mean Dole Chadee—where you would have had evidence given at the preliminary enquiry, and you cannot find the witness. If he is dead, there is no problem. There is somebody who goes and identifies his body and you prove that he is dead. If he is abroad, there is no problem, somebody will say he left the country on BOC No—you have to go through all of that—I called him up today or he called me up yesterday from India or whatever. Say, it was Dr. Bothra. That will be the proof that he was abroad. If he is unfit, you will say, well we have a medical certificate from doctor x, y, that he is now suffering from this. When he gave the evidence he would have had to be sane, of course, because that evidence would not be admissible. So there are those situations.

Fine, you tender the evidence but under the current law there is absolutely no provision, where even if you have a deposition, if the witness is being kept out of the way by fear, you are seeing him walking down Frederick Street, you cannot say you cannot find him, you cannot say he is dead. He is kept out of the way by fear but he says he is not coming to give evidence; that is it. Whether or not you have a deposition from him, if you are going to serve him, he is hiding from the police, that kind of thing. That would be taken care of under this law. Once you have something, all you say to him, Tom come and give a recording that you are afraid and that would be in evidence. Once, of course, you have an enquiry and it stands up.

Madam President, I think for prosecutors, not only prosecutors, but in the interest of justice, in the interest of the citizen, in the interest of everyone, in the interest of fairly having matters dealt with, should that not be the ultimate test, not allowing persons who know how to deal the system a bad hand, a bad hand from our point of view, from those responsible for the administration?

I think this is a good piece of legislation. This is something that Parliament must pass because it would prevent the elimination of witnesses, it would prevent the possible kidnapping of witnesses to prevent them giving evidence, it would be useless because if you did that they would come and give evidence anyway. The threats to your family, if you are threatened, the witness says I am not giving evidence, then the prosecution applies and you put in the evidence and they cannot even cross-examine him. If this legislation is used a few times then you will see that it is valuable. Let us not do any of these things because we will not be able to cross-examine those witnesses. Madam President, do you see the point?

In Jamaica, because they realize that now the person is dead, they cannot cross-examine them, it drops so the witnesses lived and you went through the process. The same thing will happen, I think.

Thank you very much, Madam President. [*Desk thumping*]

Sen. Harry Persad Mungalsingh: Madam President, we have heard this afternoon from the Office of the Attorney General and we have also heard from the Office of the Director of Public Prosecutions through Sen. Dana Seetahal, S.C.

Sen. Jeremie, S.C., who indicated that the purpose of this Bill was to fight crime. He said his administration's methodology was to use—

Sen. Jeremie, S.C.: Can I say on a point of clarification? I did not say that the purpose of the Bill was to prevent crime. I listed a series of measures and I said that legislation alone cannot fight crime, so that is highly inaccurate. I said that it can contribute in our efforts to deal with crime.

Sen. H. Mungalsingh: Would contribute to assist in the diminishing of the spate of criminal activities. He was using legislation, it would assist with witness tampering and intimidation, and he did say, Madam President, it is one tool in waging the war against crime.

Sen Seetahal, S.C., went to great lengths in her contribution on what is hearsay evidence. However, in her contribution she did not put much emphasis on the constitutionality of the Bill, and she did not deal with any aspect with respect to the strength of the witness protection programme and most of all, she did not deal with the political implications of this Bill.

Madam President, let me say right away that we of the United National Congress have no difficulty whatsoever in taking measures which would assist the public prosecution by the State against kidnappers, against serious criminal activities, where witnesses are threatened, where witnesses are intimidated.

The Bill in itself is too loose and it appears to have been drafted far too quickly. The Bill certainly was not referred to the Criminal Bar Association and to senior counsels in the fraternity who have much experience with respect to legislation of this type, the implementation of this type of legislation and the loopholes that attorneys can use, or political administrations can use in legislation of this type.

We consulted and sent the Bill to the Criminal Bar Association. In addition, we sent the Bill to all senior practising attorneys who practise criminal law. We find it a bit strange that the Office of the Attorney General and the Office of the Director of Public Prosecutions, the comments from the Criminal Bar Association, and from senior counsels who practise this type of law were so different from what we heard from Sen. Seetahal, S.C. and Sen. Jeremie, S.C.

We understand Sen. Seetahal's, S.C. predisposition to prosecution and ensuring that prosecution has absolutely all the necessary tools to effect convictions, especially when you yourself are part of the prosecuting process. That is her bias, and I think it is very important for the Senate to use—

Sen. Seetahal, S.C.: Madam President, I object to the statement by the Senator, that especially when you yourself are part of the prosecution system that is so biased. I presume is so biased, in any case. The point is I prosecute and I defend. I just came from defending a murder accused in the Privy Council. Apart from which—I think when you are making personal comments of that type you should probably check with other people to see if that kind of "you yourself" is accepted here, and to understand and know what you are talking about. If you are going to quote from the Criminal Bar Association, I could perhaps, quote from Senators with whom I spoke. At least ensure and tell us exactly whom you are speaking about.

I do not take kindly to anyone attacking my character when I can very well make attacks against others. It is out of order. I choose not to make personal attacks against Senators.

Madam President: Senator, that was very much out of order and I would ask you to please desist from making those kinds of comments about the Senator or any other Senator. You should withdraw that statement about Sen. Seetahal, S.C., I think it was undeserving. Please withdraw it. [*Interruption*] She did not attack the Senator.

Sen. H. Mungalsingh: Madam President, if I offended the Senator in any way I sincerely apologize, and I absolutely meant no personal attack on her at all, and that is genuine. That is from my heart.

It is just that the strong support by Sen. The Hon. Jeremie, S.C. and Sen. Seetahal, S.C. of this Bill did not take into account some of the defects that we on this side see as obvious defects. I would like to go into those specific defects.

Madam President, there are two elements to this Bill. I think it is important that we who are not fully trained in law—we are not lawyers. Sometimes our language is imprecise, sometimes we do not understand all the nuances in words but at the same time, we have common sense and it is very important for this entire Senate, for the media and the listening public to understand that we have to use common sense with respect to this Bill to see the far-reaching effects of this Bill and not constrain it to the comments of Sen. Jeremie, S.C. and Sen. Seetahal, S.C.

If this Bill is constrained to what the hon. Senators are saying, it would definitely be the right bucket for the water. However, if you examine its flaws, its constitutionality, and other aspects of it you can see that this Bill can be used to detrimental effects. One major aspect that we must not forget is the context of the Bill and this is very important for the media, as well as the listening public and the Senate, the political implications of this Bill. Why it must be considered is over the past two years there have been numerous trials against former government Ministers and former financiers of government parties. It is very important. There is nothing wrong in prosecuting criminal activities, but what could be wrong, is if you use designer legislation like designer jeans—[*Desk thumping*]

Madam President: What is your point of order, Senator?

Sen. Dumas: Madam President, I am joining the two sentences, I am suggesting that the Senator is imputing improper motives.

Madam President: On what?

Sen. Dumas: Madam President, if you say to us that this administration has prosecuted former Ministers and then you say to me in the next sentence that you have designer legislation, and you link both as the context of the legislation, the Senator is suggesting that the Government is designing legislation to go after the opponents of the Government. I am suggesting that is improper.

Madam President: I got you Senator. It is very farfetched.

Sen. H. Mungalsingh: It is very important that we understand the common sense aspect of not only the legal weaknesses, but the political implications of this Bill.

This Bill is designed specifically to weigh the scales of justice in specific court matters, but what worry me are the current investigations that this administration is presently pursuing. For instance, this Bill could possibly be used in a current investigation where, if the evidence is not clear in his judgment, and where there might be instances this being a political year, that some action could be taken against specific persons in such circumstances. [*Desk thumping*]

In other words—and that is why the political context has to be examined—firstly, the history over the past two years of court matters against a former administration; secondly, the current political climate, thirdly, the reported investigations in which the administration is trying to bring actions against certain individuals where the DPP had—

Madam President: All right, Senator, I think you are kind of bordering there now on imputing improper motives against an entire administration. So I suggest, when you come back after tea, you desist. We shall now suspend for tea and return at 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. H. Mungalsingh: Madam President, I was at the point where I had indicated that there were a number of legal weaknesses in the Bill. There are five aspects that one should look at, not from a legal point of view, but from a common sense point of view.

(1) the cross-examination of witnesses;

(2) hearsay evidence;

(3) the administration aspect;

(4) the violation of sections 4 and 5 of the Constitution;

(5) it turns upside down the principle of being innocent until proven guilty.

I repeat that we on this side have absolutely no difficulty whatsoever—in fact, we have criticized the administration with respect to the weaknesses of the Witness Protection Programme—in ensuring due process and fair trial when those

who are being prosecuted, try to weigh the scales against the prosecution by intimidating witnesses and ensuring that they do not give testimony. We have no difficulty ensuring that due process and a fair trial work and that the scales are not unduly weighed against the State. However, we do have some difficulty and above are the five areas.

Madam President, I refer specifically now to the Bill to give some substance to these five areas. Firstly, in clause 2 of the Bill—I know that the Minister and Sen. Seetahal, S.C. went to pains to explain what exists in terms of the Mutual Assistance in Criminal Matters Act and how it operates. Sen. The Hon. Jeremie S.C, at great pain, explained the *locus standi* of why the office of the Attorney General is in this specific clause.

Sen. Mark quite properly indicated that the Bill should be amended to reflect, not the Office of the Attorney General, but, properly, the Office of the Director of Public Prosecutions. As the good Senator said last week, if we have to take second best, the role of the Attorney General's office should be spelt out as purely administrative in this function, with respect to ensuring that his role is collecting physical documents and passing them to the chief of police who then examines the documents and passes them to the DPP. So going for second best with respect to this clause, we on this Bench would like the role of the Office of the Attorney General to be spelt out very clearly as an administration function with respect to the chief of police and the Office of the Director of Public Prosecutions.

Section 15C is so wide that anything can play. If you constrain it to the definitions by the Attorney General and by Sen. Seetahal, S.C., it fits perfectly. However, if you let your imagination run a bit and take them one by one and come back to the philosophy behind it—let us deal first with the philosophy because that is more important—no oath is required. There is nothing to ensure truthfulness and nothing to ensure accuracy. I personally am worried about admitting email into evidence.

The technology with respect to email is such that you can doctor them. There are programmes with which you can backdate them and show that X sent an email to Y. With the technology that exists, this legislation should be very careful concerning the admission of email as evidence. In terms of the weakness of the philosophy, there are these four elements.

I know Sen. Mark gave an example, but I want to give one specific example: A bright criminal mind can give someone with terminal cancer, who knows he is going to die in two months' time and wants to leave something for his children,

$1 million to give evidence or a statement and that could be entered as evidence. This is deceased.

"(b) is unfit by reason of his bodily or mental condition, to attend as a witness;"

We understand what the Attorney General is trying to achieve but it requires a greater definition. We need to know at what time the person was adjudged mentally unfit. The Act goes on to test the credibility of such a person. You can say that he was mad in the first instance, but, again, this is quite wide.

"(c) is outside Trinidad and Tobago and it is not reasonably practicable to secure his attendance;"

Let us take a practical example where someone has turned state witness in, say, Miami and has to give evidence in a local matter. If you look at the example where Sen. Mark referred to the Seeromanie Maraj-Naraynsingh matter on December 19, that case fell apart primarily on the cross-examination of the State witness. Perhaps if the court was only relying on the statement, that case could have turned out differently.

Again, we go to the example of someone in Miami who does not want to be cross-examined. One can come under this Act and say that it is not reasonably practical to secure his attendance. It is too wide. If we are going to make legislation specifically to solve a problem that the society is having, the wideness and scope of the Bill does not address the type of specific problems that the Attorney General has and that Sen. Seetahal, S.C. spoke to so fluently. That is a major point that this side is making. We empathize with the hon. Attorney General. We understand his problem. We have criticized him vehemently with respect to the Witness Protection Programme and how badly he has managed it. At the same time, this Bill does not solve his specific problems. It is far too wide and a bright young lawyer, who is now trying to prove himself, not a mature lawyer, can use it to do a range of things that he should not be doing. A mature lawyer like Sen. Seetahal, S.C. or Sen. Jeremie, S.C. will use it appropriately.

With respect to the issue of cross-examination, the point is well made by Sir Lionel Luckhoo. I would like to read into *Hansard* what he had to say with respect to this in the Court of Appeal:

"Though this is a court of rehearing it should be borne in mind that we, sitting here, see only the recorded testimony in cold print…"

Something similar to common sense. The Court of Appeal does not really see expressions of witnesses and how people react; whether the man's eye jumped and things like that. That is what a jury sees and what makes the emotion of a juror to say yes or no to a case.

> "…we, sitting here, see only the recorded testimony in cold print, coming, as it were, at second hand, and are deprived of the advantages of the recorder who obtained it at first hand. We are robbed of that appeal which only a live version can have on the senses, robbed of the ring of truth in the spoken word…"

That is what a jury listens for. You would know whether the fellow, no matter how articulate he is, from the tone of his voice is telling the truth or not. You sense it from your spirit.

> "robbed of the ring of truth in the spoken word which only the trained sensitive ear can detect, robbed of the manner in which the testimony was given which only the keen judicial eye can perceive, robbed of the whole atmosphere in which the examiner and cross-examiner elicited that testimony. We are called upon to assess and analyse that evidence which in print might look formidable but which when given must, indeed, have been devoid of the qualities of conviction."

It comes to the point I made originally that it is so important that when we approach matters of this type that we use common sense with respect to the determination and understanding of the philosophy behind it.

I do not have to repeat it, but a bright young person can use this Bill injudiciously and we have to be careful about that. Again, the advice of Sen. Mark is to send this Bill to be redrafted or to some select committee of the Senate or someone who can define exactly what the Attorney General's problems are and deal with those specific issues.

I now move to the fundamental rights of citizens and the Constitution. As far as we have been advised—we are not lawyers, so we have to go to lawyers—by competent senior counsels, this Bill requires a special majority because it impacts on sections 4 and 5 of the Constitution. Of course, if the Attorney General wishes to proceed as he sees fit—but it will be tested.

These sections deal with the fundamental rights of due process and fair trial. It is the right of the individual to confront his accusers, which include witnesses and to cross-examine them. That deals with the rights of the individual.

We move now to the credibility of witnesses, section 15D, who give such statements. The common sense aspect of it is that after this is entered as evidence, the damage is done. I can use a business metaphor of when a businessman's financial credibility is destroyed. Let us suppose there is a newspaper report; A, B, C and D happens. Immediately the banks pick it up, they call you in and talk to you. No matter how much you refute it, no matter how much you show all the evidence clearly as to what took place, the damage is already done.

With respect to this, we have to be very careful with the admission of such evidence that with what is done the balance is far more than what could be redressed by questioning the credibility of the person who gives it. Again, Sen. Mark did very well and it would be repetition to talk about the 21-day aspect. That is a useless clause. I do not know why it is here in the first place. I do not know who drafted the Bill in the first instance. We are told that it was by a British Queen's Counsel. [*Interruption*]

Madam President: Sen. Mark, you had your turn.

Sen. H. Mungalsingh: With respect to section 15D(c), if you read the words and try to make sense of it and try to see what are the procedures, how will the section work? Maybe the Minister can tell us. Just reading it, it is very difficult to ascertain how it will work.

Of course there is 15A, which says that sections 15B, 15C and 15D shall also apply to a preliminary enquiry held under the Indictable Offences (Preliminary Enquiry) Act. Of course, the matter that is caught by that is the current Chief Justice matter. [*Crosstalk*] We have some political matters that are coming up very shortly in the airport enquiry. [*Interruption*] I can use more precise language. I am not the best at it, Sen. Dr. Saith. Criminal matters with political implications. If that suits you better.

Again these matters are caught by that and we have to ensure, especially in an election year, it is important that we understand it and that the viewers understand it. I am not drifting from the Bill, but the Bush administration, in the last election, used the politics of fear, where he would "ratch" it up orange to green to red in terms of terrorist activity. Analogously, we could bring it to Trinidad and Tobago and a government can use the same politics of fear, convert it to the politics of anything—dishonesty, whatever you want to call it and "ratch" it to green, to red, to whatever it is, by just bringing charges, not necessarily proving them. Remember the Bush administration. I am not drifting, Madam President. I am really focused on the Bill.

Madam President: I was wondering whether you were imputing improper motives.

Sen. H. Mungalsingh: No. I would not do that. Before I come here I pray, so I try not to—

We have to be careful with section 15E so that it is not used as a political tool as the Bush administration used the Anti-Terrorism Act in the United States. I hope that I have made the point to all the Senators and the viewership.

I close my submission. I think Sen. Mark covered, in detail, all the other aspects. I want, though, to deal with one aspect which the Criminal Bar Association raised with us so that we could raise it in this Senate. This Bill can be used to prosecute. [*Crosstalk*]

Madam President: You are interrupting your own colleague and that kind of crosstalk is preventing me from hearing what he is saying.

Sen. Mark: My apologies, Ma'am.

Madam President: Accepted.

Sen. H. Mungalsingh: This is the only aspect Sen. Mark did not raise because he ran out of time. This Bill can be used to prosecute opponents of government policy by fabricating all kinds of evidence. It is so wide. It could mean that Gutierrez and Hillman do not have to come to Trinidad to face the courts because it may be reasonably impossible to transport them here, that is, it is a security risk to testify or be cross-examined. In the integrity matter against Mr. Basdeo Panday, the bank officials from London at one time were uncertain whether they could fly to Trinidad to testify regarding certain documents. It would mean that those documents could have been admitted without complete and thorough explanation by the officials. In other words, they could submit a bank statement or document saying X or Y amount of money came. Somebody could say they gave Sen. Mark that money for free, but the explanation by the bank officials with respect to the statement forms 40 or 50 per cent of that document. It is important, not only to get the bank statement, but the meaning behind it.

With these words, I end my contribution. I ask Senators, especially Independent Senators, not to support the Bill in its present form. I ask them to vote on conscience and to think seriously about the nation and the future.

Sen. Prof. Ramesh Deosaran: Madam President, having had the pleasure of listening to the debates this afternoon, like my colleagues in the Senate, it seems to me as if the Constitution itself is on trial during this debate. Whenever the Constitution is on trial in this context, it means that section 4 is really in sharp focus, meaning the rights and freedoms guaranteed to citizens.

It seems to me as if the rights and freedoms are dual in the sense that they are designed to protect, in the instant case, people who are accused, but if you study the provisions carefully enough, you will recognize that that protection should also be given to law-abiding citizens. That is a fundamental point in terms of—if I should echo the words of the Attorney General—trying to seek a proper, fair and just balance.

Why is there need for a fair, just and proper balance? Because we are tackling one of the most serious issues in the people's right to a fair trial, especially since we are using the element of hearsay evidence. It compounds the concern that people would naturally have in this exercise. It is said, if I should recall the words of a British Jewish jurist, R. J. Walker, who produced a text which some of the colleagues in law might know, the *English Legal System* by Butterworth, R. J. Walker, quite simply said that the rule against hearsay is probably the best known and certainly the most important rule of evidence exclusion. It tells you the solemnity with which this debate ought to be approached.

5.30 p.m.

There is a distinction, which in my respectful view we should understand, that is, over the years in the United Kingdom, particularly, hearsay evidence has been accepted. In other words, there have been exceptions to the exclusion rule. There have been exceptions, cumulatively and with good reason if I remember, most of it culminated in the Civil Evidence Act of 1968, which delineated the conditions under which hearsay evidence could be used fairly.

Before I proceed, I want to express my appreciation to my colleague, Sen. Seetahal, S.C. for clarifying some of the technicalities for our benefit, whether you agree or not, in some of the substantive issues. But some of the technical matters were perhaps I think clarified to some extent for us, still being guarded about the political implications that Sen. Mark and Sen. Mungalsingh alluded to, which I will come to later on because there seems to be a fear, not of the intrinsic merit of the legislation itself, but the possible implications and consequences which are two related but separate matters because it implies to me if there was not this fear of the political consequences, the legislation might be more readily accepted

under normal circumstances. Hearsay evidence is from what I understand, simply admissible if it is just a statement or fact as against its contentious nature in the sense of challenging or trying to use facts to prove a matter. That is an important distinction when we try to put a total barrier against admitting hearsay evidence.

Madam President, I want to spend two minutes to conceptualize something that is happening in this country. For too often we use the theory of a fair trial without attending to the realities that confront the courts at the present time. Scientifically, what we should do as a Parliament and more precisely as jurists, lawyers and judicial officers is to look at the evidence, the empirical realities challenging the judicial system today, but within the theory of a fair trial. I would venture to say at the present time that the justice system in this country is taking a severe beating. The justice system in this country for several reasons has become a football at the hands of very unscrupulous and mercenary elements. We must however, thoughtfully enough not generate a response equivalent in nature. That is, we should generate a response that is fair, just and balanced.

Madam President, the challenge therefore, is to see whether the instant legislation to amend the Evidence Act fulfils such criteria. It is my view that what should be a fair trial in courts, that whole practice of a fair trial has collapsed, virtually. A fair trial should not and it could not mean a fair trial just because you want the accused to get away and then you pronounce it has been a fair trial.

Madam President, so many victims in this country are grieving for the dismissal of cases; for the inability to carry on cases; for seeing mothers cry, wives cry on the television as if in one instance you can see the tears at funerals. And one thing they keep saying that should move the consciousness and the intellectual capabilities of our parliamentarians, as legislators, they all say, we want justice. They keep telling us in different forms and fashion and with tears, heavy grief, we want justice. We at the centre for Criminology have a record of all those occasions, that is part of our job. We have a file called “victims” and we can deduce what I am saying from the record. But I am not the only one talking about the collapse in the judicial system, the Director of Public Prosecutions has said so and judges have also said so. The question is, will this amendment heal that serious breach?

It is rather fortunate even in this gloomy context that we are still a democracy that we can stand here and debate this Bill robustly, as Sen. Mark did and I do appreciate some of his concerns just like I do Sen. Mungalsingh's concerns more pointedly on the political possibilities. But I on the other hand cannot allow the

law to stand in the way of justice. And I used the word once "sterilized legalisms", meaning that if the law remains too statistic and unresponsive to what I call the empirical realities challenging the system, I think we will degenerate into a very uncivilized, primitive society, something which we do not seem to be far away from, if nothing is done to cure the ills and the challenges that face this society.

Madam President, if you examine the Bill, there are grey areas; there are options; there is sometimes room for abuse, but you tell me which piece of legislation does not have room for abuse? And one Senator used a very good expression a while ago and I will come back to it, "Young bright lawyers who want to make their name"; what they are doing to the courts of this country. The very mercenary approach that they take towards seeking justice for the accused, especially for the accused in the name of justice, which piece of legislation is not subject to abuse? The law is not an exact science; all we try to do is to create a plausible set of provisions that would stand scrutiny under proper adjudication in open court. That is why we cherish public trials and that is one of the reasons that Sen. Mark and Sen. Mungalsingh have expressed such concerns, would people's safety and innocence be jeopardized by any loopholes in this Bill?

But it is more than that; we must not behave as if cross-examination is in itself an oracle or the Holy Grail. Cross-examination does not necessarily bring out the truth. I mean, that is one of the fallacies that we have to look at and what I call one of the empirical realities. So do not feel that just because you have cross-examination, especially when justice today is an economic commodity—the bigger the lawyer you have, is the greater the chances of winning a case, with cross-examination especially because of the skill of the lawyer, not because of the capacity to find truth, it is much more than that. The capacity to find what you call truth, or a verdict is heavily related to the skill or to put it more simply, to the expensiveness of the lawyer that you can get.

Madam President, there are several kinds of evil pressures being brought upon our criminal justice system today, some of which I have just made reference to. Before I enumerate on the cases that have failed, and this is what I mean by empirical evidence, that we cannot stand idly by the face of the evidence where witnesses disappear; where for different reasons some of which the Attorney General alluded to, they do not come forward and these are not cases for stealing a mango or for bouncing a car. These are cases where people are killed, brutally murdered and the accused as the evidence shows, walk freely because of the inability of witnesses or the inability to have proper statements presented in court

for adjudication. The question is, however, is this amendment moving too far and is the loophole so deleterious so as to put people's safety and the innocent at risk?

But I must refer to some of the statements by the previous speakers, including the hon. Attorney General and I have already referred to his search for a better balance versus the rights of citizens and I am happy that he bears that in mind so he would listen to any suggestions we might have to make on that course. He did cite a 2005 Privy Council ruling from a Jamaican appeal as where the overarching law stands with respect to interpreting the matters raised in this legislation. He did mention the Central Authority being located at Attorney General's Office. I remember during the debate or on a subsequent amendment or some matter related to the Central Authority because objections were raised just as they are raised today, about rather than having the Attorney General, is to have the DPP in criminal proceedings and it was more than that, that is the DPP is seen to be more independent because of the way his appointment is made than the Attorney General.

But the more powerful reason for having the Central Authority lodged in the Attorney General's Office is because of as my friend, Sen. Seetahal, S.C. pointed out quite rightly, there is need to have State to State relation and in handling of treaties which are international in nature and you must have at that level somebody representing not a department or a unit, but the Government. And in this case the Attorney General is the constitutionally empowered representative in this matter of a Central Authority given the work that the Central Authority is supposed to do. So I think that in a sense it is water under the bridge, if people want to review that well perhaps they can seek the procedure to so do. But there is justification for having the Central Authority lodged where it is now at present.

The Attorney General did make a distinction because we have to enter—I will now be entering into the protection given to introducing hearsay evidence and whether that protection is sufficient. He quite carefully and properly made a distinction as to whether the hearsay evidence as seen in the eyes of the court will have probative as against prejudicial value and I think that is one of the key rationales in our pursuing the validity or the relevance or the usefulness of this legislation. There is in the amendment about four occasions on which the oversight by the court and the judge is mentioned before the evidence is adjudicated, before it reaches the stage of cross-examination. Is that sufficient? I do not think Sen. Mungalsingh feels that that is sufficient and perhaps more passionately, Sen. Mark feels that is not sufficient too.

Sen. Mark in fact gave us an example, a very dramatic one about a cheating wife which drew the attention of a lot of us. But you see, even in that case it seems to me that before the evidence reaches a court, there are these precautions and oversight functions by the judge himself or herself. So I do not think the judge will be cheating justice, I think he will be overseeing justice as a faithful partner in the exercise. Again, Sen. Mark might want to know if that is sufficient because I have to keep one eye on the possibility of abuse. Because in this country, Madam President, the propensity for rumor or what you say, bad talking, old talk and gossip and especially denigrating people's character is almost a national pastime. This is not a partisan issue, it affects all of us. We have some publications and some electronic outlets which relish in this kind of scandalous, unchecked, malicious excursions into bad talking and subverting people's good character without having the right of response.

So we have to be aware of the society in which we live, which leads me to a real danger, a real possibility of danger which perhaps in his response, the Attorney General could satisfy us, that there is some precaution. If there is, perhaps he can reaffirm that precaution just for the record. Because if the statement is made in writing, documentary form as the amendment requires and before it reaches the court for adjudication and having the status of evidence, could the press publish those allegations or statements, the content of that statement in such a way that would scandalize a person prematurely you might say, without having the content tested? I will perhaps wish if the Attorney General could comment on any way that that will not occur or if it does occur, if there is some precaution that could be taken either by statute or by some kind of rules of court. If there is already a precaution, perhaps he could reaffirm it for our own comfort.

Sen. Mark spoke about weak judges in court. Now without getting too far into that, if we begin to lose confidence in the judges of our court, well we are not only close to the precipice, I think we are over the precipice. I think if that is a genuine fear that judges are weak, meaning that they are partisan, biased and they are moved by political preferences and allegiances, I think that is a very dangerous situation we are in. I myself cannot say that we have judges so disposed, I have no evidence. That is why I think the Judicial and Legal Service Commission should ensure that the people they put there are of such integrity and high manners as you would say, and disposed to mete out justice to all those who come before their courts because the consequences are very, very serious indeed.

My colleague, Sen. Seetahal, S.C. in her absence, I did mention that perhaps what she has contributed today has been very useful in dealing with some of the technicalities of the Bill. Now she is right, there is hearsay, in fact from my understanding there is double hearsay which even compounds the problem. I think she alluded to that briefly but it is an intriguing area of law that we are dealing with. Some hearsay evidence is merely stating a fact, birth certificate and so on, but when you start to use the hearsay evidence to use it as proof, well then it becomes a little more complicated.

She is also right again. These exceptions to the hearsay evidence rule are nothing new. This is nothing new and the Attorney General pointed out and I think Sen. Seetahal, S.C. also pointed out, we are not on virgin ground here, we are not reinventing the wheel, we are following a track I believe at the time when it is relevant to our state of affairs. We are just taking one step more in that process. What keeps bothering me, as you might gather from my utterances now and previously, is the way lawyers abuse the system. Not all lawyers, some lawyers. Some lawyers really abuse the system and Sen. Seetahal, S.C. said, they also know how to gain prominence. To me, it is a profession where some people believe the more notorious you are in the press is the more lucrative your practice and that incentive should be discouraged by the law association from which I hear nothing except—well, I better stop at that point [*Laughter*] because that is a very serious issue.

No matter what laws we make, once it reaches the court, the characters of whom Sen. Mungalsingh spoke, those young bright lawyers or those who feel they are still young, abuse the system. Lawyers can do that skilfully, “gran’ charging” and then tell you take it off the record. All those little tricks of the game are really abuses of due process and as a Chief Justice said, "the Constitution is the last refuge of scoundrels". That is a well-known saying in the jurisprudential literature.

And then Sen. Mungalsingh, I think one of his major points was the political implication. Madam President, I will hate to think given the dangers that we are trying to protect ourselves from by this legislation, that anything is compounded by this amendment being used for political or partisan purposes. So far, I have seen no evidence of that emanating from the discussion, not yet at least. If there is an incident that exposes such abuse, I think the country and all right-thinking people should come down heavily on the perpetrators.

Let me briefly refer to some cases that have actually failed and I will leave it to the imagination of my colleagues and yourself, Madam President, to think about the severe consequences this has had upon the comfort of a frightened

population. These are just recent cases, if I were to bring the volume over the years, it will be very tiresome for you to listen to.

> "Nov 1, 2006: Two policemen were freed of kidnapping after all the witnesses failed to show before Magistrate Deborah Quintyne in the Arima District Court."

Failed to show! Why? Is it because of the reasons outlined in 15(C)?

Suppose this legislation was in place, would this have happened and if it should have happened, could it have been prevented? And if it were about to happen, could the evidence gathered be produced in court to save the day? That is the question we have to ask. You have two alleged murderers freed and the court has not had a chance to adjudicate and the victim has not had a chance to witness, as they have been clamouring for, justice. You know what that has done to the people of this country incrementally? Put them in the state in which they are now. So if you say shut down, they will shut down; if you say march, they will march. Anything that pushes them into a reaction against the system because they do not see the system as providing safety and protection for them. That is the bottom line. Could this Bill satisfy that gap? That is what we are here about today. Even if the Bill does not, assuming so, we have to find a way to treat with these cases.

> "Nov , 2006: A man freed by Madame Justice Alice Yorke-Soo Hon in the San Fernando High Court after the main witness refused to testify…"

And do you know why he refused to testify? For fear as he said of his life.

> "Nov 10, 2006…"

I am just talking about late last year. These are just recent cases and a very small sample:

> "—A man was freed of murder (another murder again) by Chief Magistrate Sherman Mc Nicolls in the Port of Spain Magistrate Court after the State was unable to produce its main witness."

Why? The reasons are in 15(C), one of them.

> "Two men freed of murder by Justice Devan Rampersad in the Port of Spain High Court after the main prosecution witness failed to identify them…"

as he had done previously. He said his memory, he cannot remember. Frightened! In fact, if the Government stood idly and did nothing about these things, they could be held politically responsible. As to whether this is the way, this is what we are speaking about, but I will come to that finally.

"NOV 20, 2006: A man known as 'Satan'…"

These are "fellas" in the district, you know they have names and they are big and they frighten people—

"freed…"

"Satan" was freed. That is what I meant by the evil pressures upon the Judiciary. So when you free "Satan", what else do you expect?

"…was freed by Madame Justice Joan Charles in the Port of Spain High Court because the State was unable to produce its main witness."

Again! This thing happens again and again.

"NOV 24, 2006: a former SRP…"

See, in fact they held police officers for kidnapping too. So this thing is getting more and more serious; and people are getting more and more boldfaced because they realize you come through the front door in the court and you could walk through the back door without answering any charge at all. So this free passage just cannot continue and a responsible legislature should seek proper means to put a stop to it.

"was freed of four counts of armed robbery…"

For the same reason.

"NOV 29, 2006: A man charged with killing a policeman…"

The reverse now, so police killing and police getting killed and all sides getting freed. You realize when you delineate piece by piece the evidence, how this thing looks very horrible and we are sinking.

"was freed by Magistrate Nanette Forde-John in the Chaguanas District Court after the State was unable to produce witnesses."

"DEC 4, 2006, Jamaat al Muslimeen Leader Yasin Abu Bakr freed of charges of conspiracy to murder by Justice Mustapha Ibrahim in the Port of Spain High Court because of the unreliability of witness."

And those of us who know the case will understand what that meant and what would have happened.

I am coming to the last example, but I need to put it into the record because it would really strengthen our resolve to do something that we must do in the interest of preserving public peace, safety and more so, confidence in the Judiciary and in Parliament.

> "DEC 7, 2006: Five men charged with kidnapping freed by Magistrate Avason Quinlan in the Port of Spain Magistrates' Court after the alleged victim changed his story."

That is a part of the Act which talks about in consistency and so on. Change his story; you know it is like clothes. It is like designer clothes. Not only designer legislation, change the clothes. Change his story quickly. And I always wonder why the penalties for purjury and such inconsistencies are not applied assuming that they do exist. I have seen some very big lies being told in the open court and people just walk free.

I have seen a murder case before the same Justice Devan Rampersad where the women changed her story in a murder case and the whole thing just collapsed and everybody walked free. Why is lying tolerated so much in the courts? It is not just rumour, especially when you gave those stories under oath. To me giving a story that was taken under oath, should have severe consequences if no proper explanation for a change—if at all there could be such an explanation—after the fact because you are making a "pappy-show" of the court system and it is easy for anybody to talk and on the day of the trial change a story and let the whole case collapse. That facility should not be enjoyed by scamps and mercenaries who want to subvert the Judiciary in this democratic country. We cannot stand idly by and see that happen. We should not. It is not an accident; it is too frequent. It is a habit. This is now a habit in court; it is a style.

You look at the frequency, it is a style now and I am not too sure whether lawyers instigate the practice of this style. We can no longer exist on niceties and all this frivolous protocol and so on. Anybody who knows the state of the game, some of us have been in this for a long time, we know how lawyers prepare a case because they see a fair trial as a trial that must be won at all cost. They do not draw a line as to the steps that they should take or they cannot take and you see them practising and my friend Sen. Mungalsingh was right. He knows, that is why he made the point about "some young bright lawyer will." That is what he implied.

6.00 p.m.

This is an article of December 11, 2006:

"A man was freed of murder by Justice Davenand Rampersad in the Port of Spain High Court after the main witness bluntly refused to testify."

Where are we? If you really want this thing to be solved, each player must have a responsibility and the covering up and excuses must stop.

January 11, 2007:

"Frustrated lawyer hits missing witness"

So the case is called and the witnesses do not turn up at all. Madam President, I am saving this one; it is a special one:

"Drug accused freed after 14 years…

the police complainant failed to appear 30 times."

There was another charge between 1992 and 1999 and the police complainant was absent 35 times. So this "fella" had two charges. In the first charge the police complainant was a witness; he failed to appear 30 times; on the second charge, he failed to appear 35 times. It goes on to show how witnesses do not appear. So even in this amendment, which seeks to respond to some serious situations, I hope the Attorney General and his Cabinet will turn their attention to police complainants who do not appear as witnesses. This is having a very deleterious effect on the justice system.

If I read the whole story for you in the *Newsday* of February 02, 2007, you might have to laugh, because it sounds like a comic movie. People are not taking the court seriously. Listen to what the Acting Chief Justice said. I am trying to put this legislation on the ground as to whether it is justifiable or not. I am resting it or seeking to do so on empirical evidence:

"Acting Chief Justice Roger Hamel-Smith said yesterday he would find it very hard to be a witness, given the present conditions of the witness protection programme in the country."

This was Wednesday, January 10, 2007, page 3 in the *Newsday*. What did he mean by that?

"He said witnesses were fearful of coming to court..."

So it is not just delinquency; it is the fear of appearing in court. He also said that the justice system was, therefore, under attack and he went on making reference

to missing witnesses. This is the chronicle of missing witnesses; it is a dangerous attack on judicial democracy. There are several other instances.

The last one, perhaps, that I refer to is the *Guardian* of January 27, 2007, page 7, where a United States judge complained about the slowness of the Trinidad and Tobago courts in delivering justice and finalizing cases. We have to wait till an American judge tells us what we should be very concerned about. So this protecting of interests, when you speak about the Law Association and the Criminal Bar, I want to know why they have not made their views public. Should they not search to find out every piece of legislation that hits Parliament?

They should have the machinery to get that piece of legislation and comment upon it, as a public body functioning, especially the Law Association, under an Act of Parliament. We gave them that Act of Parliament to carry out their public duty and, certainly, if they have not done it so far, they should make a comment on this legislation publicly. I know they have given out the benefit of their advice to Sen. Mark and his team, and quite rightly so; that is a civic duty, but the wider public would want to know what the Law Association says. We are waiting with bated breath.

We have heard Sen. Seetahal's explanation, which we welcomed, but you need the professional body, assuming, hopefully, they could get a quorum to discuss this particular matter. We do not want to block passage of the legislation; but we want to ensure, to ourselves, at least, that it is fair, just and balanced. Situations to which I referred, no doubt, prompted a commentator in the *Newsday* of Sunday, January 28, 2007, page 11, to ask the question that with all these things going on:

"Is the law an ass?"

That is what people are beginning to think. We have to stop playing games and trying to protect this and that interest, when the facts are beginning to stare us dismally in the face; especially as evidenced through those fallen cases and the chronicles of the missing witnesses are facing us.

Then we heard the Prime Minister of St. Vincent telling us, "You got to be tough" and that we seem to be skylarking too much in getting things done to deal with the problems that we have. I will not refer to his statements; I think everybody would have read them, but they are another reminder, in addition to the one from the United States, that we have to buck up on our Judiciary. It falls heavily on the shoulders of the Attorney General, as legal advisor to the Cabinet, and his colleagues, to let this country shape up in terms of law, order and justice which means fairness.

I want to spend the few remaining minutes on the Bill itself. I think I have made some comments on section 15B. Section 15C(1) is the one that has caused a lot of excitement, and duly so. It says:

> "Subject to subsection (2), a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person..."

And you have five conditions. A key element in that, as you might suspect, in my view, is that it has to be proven to the satisfaction of the court. In my simple understanding, subject to correction, once you have that, due process criterion is satisfied. In other words, it seems to me that the accused and all other players in the court are protected because that is what we have the judge, meaning the court, there for. That is why we have to ensure that we put judges who have integrity, balanced minds and a sense of fairness to execute such provisions.

The conditions are if the person:

(a) is deceased;

(b) is unfit, by reason of his bodily or mental condition..."

I would assume that when he gave the statement, his mental condition was good. Taking Sen. Mark's very interesting point, I hope that his mental condition would have deteriorated afterwards. [*Laughter*]

"(c) is outside of Trinidad and Tobago..."

Many of our cases have not only been dismissed, but there is the other problem of having cases postponed. When you postpone these cases a lot of tourists do not come, even though they are injured or they have things stolen, because of the difficulties in travelling. Perhaps this might be assistance in such cases; so the crimes against tourists might get some relief. That is a big issue in Tobago, as some of us might know.

Where the word "reasonably" is used, here again the judge would have to adjudicate, Mr. Attorney General, on whether it is reasonably practical. It is not just a matter of the person saying that he cannot come; it has to be enquired into. I am beginning to sense that, perhaps, we are on to something reasonable here—if he cannot be found after all reasonable steps have been taken to find him. You know in this country, small as it is, you could really hide to the extent that people cannot find you and that is quite evident by kidnappers. I do not know how these kidnappers disappear in this small country. [*Interruption*]

Madam 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. Dr. E. Mc Kenzie*]

Question put and agreed to.

Sen. Prof. R. Deosaran: Madam President, we have to have some assurance that all reasonable steps are being taken to find him or her. I think that is clear enough. But why would he be hiding? It brings us back to my interest in criminology, and not only the law. Why do witnesses hide? Why would they want to hide themselves? The answer that I have in mind could be taken up in subsection (e) if such a person:

> "is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person."

This is linked to the Witness Protection Programme. I think this is the one that is at present bothering a lot of people and it seems to be eating away at the foundations of a fair trial for the victim as well as for the State.

Anybody who issues a threat to a potential witness should be severely dealt with. Of course, the Attorney General might say that is in common law already. I think he made that point in his presentation. Anybody who issues a threat, implied or explicit, to a witness should be treated very severely by the court, because the common law powers are already there. You do not need any big paraphernalia to delve into that matter; instantly, almost as if it were contempt of court; instant action.

I am also worried about the possibility of the bribing of witnesses to change their story. I believe that is a matter which is quite plausible, given the way these things happen. That is why free speech in a Parliament is important. I will not cross the line, I am merely taking the opportunity to put something on the agenda that is very important for having a fair trial. It seems to be plausible that a lot of witnesses are being bribed not to appear in very serious cases. If a man is accused of murder or any serious charge, he and his family will spare no amount of money to pay to get off; apart from paying the lawyer, which is quite reasonable.

So this possibility of bribery, once a witness tells you that he is unwilling to come, I think a deep enquiry should proceed to find out what is the reason. Rather than just implementing the Act, go behind the scenes and find out why, if at all you can do it, this person has not appeared or has been kept away, especially if you know that it has been threats of bodily harm. If you know that it is through

threat of bodily harm, well you know it already; the next step for you to take is asking who has issued this threat. Then you will drive back the forces of evil step by step; those that I mentioned earlier on.

Apart from protecting the witness, you have to protect the Judiciary and the concept of a fair trial, by tackling the person or persons who issued that particular threat. On 15C again, the notification to other parties, so everybody would know and in subsection (3) you have:

"…with the leave of the court."

Again, the thing could be brought in with the leave of the court and it goes on again to 15D(b):

"evidence may, with leave of the court..."

So here again the word "court" kept in the forefront as a guardian of the proceedings, which I think is a fulfilment of due process. Subsection (c) deals with that very injudicious, wicked habit of changing your story along the way, sometimes amounting to lying. This should be seriously dealt with by the Attorney General and the court and not merely dismiss the case because the person's story does not stand up to scrutiny. It is an assault to the Judiciary. It is an assault to our society for people to be lying in court, especially if they have given a statement under oath.

Where do I stand with this? I believe on balance. Some credence should be given to the Attorney General for bringing the legislation. I will wait to hear other speakers who, perhaps, would change my mind. Steps like these are now necessary to preserve law, order and justice in a country besieged by criminals and engulfed in a regrettable wave of the fear of crime.

Thank you, Madam President.

Sen. Raziah Ahmed: Madam President, in this debate the hon. Attorney General began by saying that the justification for this amendment was to reform the criminal justice system and to deal with the spate of criminal activity. I begin by saying that the spate of criminal activity in this country is appalling. We have reached a precipice in terms of our inability to deal in any substantial way in spite of millions of dollars on all kinds of programmes and packages and equipment, and it is extremely disappointing to know that this has happened almost overnight in the last three or four years.

The Attorney General went on to speak about some cases and some references and the challenges that the prosecutors have in the courts. He ended by making a

revelation, and I wrote what he said, that if we did not support the legislation we would contribute to the collapse of the criminal justice system.

Madam President, the Bill before us seeks to introduce hearsay evidence. By its very nature, it is almost common sense that hearsay evidence is generally thought to be untrustworthy and, therefore, it is a poor form of evidence. The term "generally untrustworthy" is not my own coinage, rather it comes out of the rules of evidence for Canada Evidence Act, appendix eight; so this is not my determination, because I am not a lawyer. It is not my determination that hearsay evidence is generally untrustworthy, but this is in the Canada Evidence Act that was referenced by the learned Attorney General in his opening remarks.

That document goes on to explain why hearsay is a poor type of evidence and lists a number of reasons. I think these are instructive, least we get carried away by this need to introduce hearsay evidence into our legal systems.

First of all, the author of the statement is not under oath and his statement is not subject to cross-examination and he knows this. [*Interruption*] [*Crosstalk*]

Madam President: Senator, will you give way, please.

PROCEDURAL MOTION

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that the Senate continue to sit until the completion of debate on this Bill.

Question put and agreed to.

EVIDENCE (AMDT.) BILL

Sen. R. Ahmed: Secondly, Madam President, there is no opportunity to observe the behaviour, demeanour or body language of the declarant. It is also universally acknowledged that accuracy with respect to hearsay evidence tends to deteriorate with each repetition of the statement. It is also known that the admission of such evidence lends itself to the perpetration of fraud. Hearsay evidence results in a decision that is based upon secondary and, therefore, weaker evidence than what is generally thought to be best evidence.

The introduction of hearsay evidence has a tendency to lengthen the duration of a trial. Therefore, I want to question in 15B(a) how we can actually put into our legislation that hearsay evidence is being equated to best evidence. I find that

in our legislation there must be a clear distinction between what is; there must be a definition of what is best evidence and there must be a definition of what is hearsay evidence.

I had to wait on my colleague Sen. Seetahal, S.C. to offer a definition and she read from certain sources. I would like to see definitions in our legislation, because the parent Act does go into definitions for words such as "statement" and "document". I think that this piece of legislation needs to define exactly what hearsay is, because it cannot, it ought not ever to be equated with best evidence. Best evidence in law ought to be something that is pure and should not have any overlapping with hearsay evidence which is generally untrustworthy.

What happens when a person who makes a statement that is being tendered as hearsay evidence decides, from some remote position in some part of the globe, that he wishes to withdraw the statement? Does the owner of such a statement reserve the right to withdraw it? The legislation is also weak—apart from the several weaknesses that have been pointed out by my colleague of this side in that it seeks to introduce hearsay statements as evidence, but it does not speak to the possibility that statements can be made as a result of torture, cruel, inhumane or degrading treatment and by persons in detention. If we are to introduce this kind of legislation into our law in this form, then there has to be some kind of protection for persons who are in detention and for the treatment of detainees.

In other places in the world, people have been detained, abused and subjected to all kinds of degrading treatment and forced to make statements. We need to differentiate between laws that allow people to introduce statements of a nature that are generally untrustworthy and the fact that while in detention there are claims and documented cases that persons are forced and coerced to sign certain statements. We need to be clear that we have protection for persons who are detained under the law.

I was also taken aback in the debate to learn that there are persons in this Senate who in their contributions could come to the Senate—I do not know if I understood wrongly or if I misheard what was said, but I got the distinct impression that one of my Senate colleagues was speaking for the office of the Director of Public Prosecutions (DPP). I am particularly disturbed about this. If I am wrong, if I have misunderstood, then I stand corrected.

Sen. Dumas: You could speak for the Bar Association. [*Laughter*] [*Crosstalk*]

Sen. R. Ahmed: I must say that in my capacity, it is my belief that we ought not to be able to speak for the Office of the Director of Public Prosecutions (DPP) in sittings of the Senate. [*Desk thumping*] [*Crosstalk*]

Madam President: Senator, I am trying to recall who in this Senate spoke for the DPP. I do not recall anybody. I remember Sen. Seetahal, S.C. saying that she may have discussed matters with the DPP; that is a different thing to speaking for the DPP. I think you need to be careful of your facts. [*Crosstalk*]

Sen. R. Ahmed: Madam President, I said in my clauses to my statement that was what I believed I heard.

Madam President: You may have heard wrong.

Sen. R. Ahmed: If I am wrong the *Hansard* will bear testimony to what was actually said.

Sen. Dumas: You are being rude to the President.

Sen. R. Ahmed: I am calling for a definition of hearsay, because it is not clear to me whether or not this is evidence that is brought to prove the truth of a matter that is asserted or if this is simply charges that are being laid.

In addition, when I looked at section 15C(b) that spoke to a person being unfit to appear in court by reason of his bodily or mental condition, I believe that we ought to define clearly the parameters of what is being unfit in terms of the body, for the simple reason that disability, whether it is partial or permanent, ought to be clearly defined and we ought not to be able to hide behind a broken leg or arm or the use of crutches or the absence of a wheelchair. So there has to be some kind of tightening of the definitions in this piece of legislation if it is to become more meaningful.

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

Under section 13A(2) of the parent Act it appears to me that a person incapable of understanding that he is under an obligation to give truthful evidence, is not competent to give evidence. I am wondering whether sections 13A(2) and 15C(b) interrelate or not or whether one of these subsections should be placed elsewhere in order to make the entire legislation more meaningful. There are several other instances where between the old parent Act and the new piece of legislation there is a definite need for a special select committee to review the entire Evidence Act in order to realize the dream and the goal of the legislation

which is to stymie the state of criminal activity in this country. There is a real need to look at this in a more holistic way. I am not sure that section 13A(2) and section 15C(b) should not be interrelated in some form or fashion in order to be more holistic in intent.

Under the submission of evidence in writing, what provision do we have in law if it is put forward by the legal representatives that the document submitted has been altered or that a previous document existed elsewhere or that the contents of the document do not reflect what was actually said? What do we have in law to retract, clarify or throw out the admissibility of that kind of evidence. For example, if a photograph is produced together with the document, how do we know that these things have not been doctored? What kind of time frame do we have for determining whether or not the fact that statements could be altered or damaged in transit that these things will not, in fact, lengthen the whole duration of a trial?

Mr. Vice-President, it appears to me that while there is need to do something about the quality of evidence and the unwillingness of witnesses in the system to come forward, this piece of legislation before us does not adequately address the legislative needs. It is piecemeal and tries to make hearsay evidence as best evidence. Whereas Sen. Prof. Deosaran was speaking about seeing it in terms of the kind of track we were following, I am wondering whether this piece of evidence was not "making track for gouti to run".

Sen. Angela Cropper: Mr. Vice-President, we have heard repeatedly in this Chamber over time and elsewhere in the society about the very high incidence of crime and the siege under which the country lives right now. There has been much representation in the Parliament and outside about the need for us to get our act together and to respond with urgency, to indicate that we are actually getting to the bottom of some of the reasons for the spate of criminal activity. I see this Bill as an attempt by the Government to respond to that situation and to those representations.

I do not for one moment assume that the Government rests the entirety of its response in this one Bill, but I certainly believe that it is a very important piece of legislation in terms of trying to address some of the weak points in our legal system right now. We have also repeatedly heard about the very low rate of conviction in the courts of people who have been accused and tried. There are many reasons for that. We know that one reason has to do with competencies with which matters are brought before the court.

I remember reading something in the newspaper maybe last week and if the report is to be believed, the Court of Appeal upheld the appeal of a policeman who at the High Court was convicted of sexual abuse on a female. The reason the Court of Appeal gave according to the newspaper report was that the charge had been phrased incorrectly by the Office of the Director of Public Prosecutions (DPP): it should have read that the policeman was accused of conducting or carrying out sexual abuse on a person and the charge was formulated as sexual abuse on a person. That was the reason that at the Court of Appeal the policeman's appeal was upheld. I think that was a travesty of justice when such a small incompetence on a technical matter or oversight could be allowed to weigh in the balance and overturn and override all the claims to justice.

We also know that there are many loopholes, technicalities; we read about them all the time; we hear about them all the time; technicalities by which persons who are accused of criminal offences and against whom there is an abundance of evidence, but who are able to escape the verdict of the law, because of some technicalities. I think we also have to look at those and gradually see how we can eliminate them from the system.

We also know that a lot of the low rates of conviction have to do with unscrupulous lawyers who actually use those technicalities deliberately and knowingly in order to win their cases, because that is the object of the exercise for many of them, not to see that justice is done.

Mr. Vice-President, from my own opportunity to observe a court matter in process, the only one which I have had the opportunity to observe in depth, up close and personal so to speak, and in addition to my own study of the law, I have long held the opinion that the criminal law and especially the law of evidence is heavily weighted in favour of a defendant. I see this Bill as a small attempt to redress that balance somewhat; I think that is to be welcomed. I also want my fundamental right to life and liberty and freedom of movement to be protected and I would want the State to assist me in protecting that. I think the balance of which Sen. Prof. Deosaran has spoken is something that is very, very difficult to achieve in a civilized society, because we want to be sure that we protect the rights of those who are accused as we deem them innocent until they are proven guilty; but equally we need to make sure that the society as a whole feels assured that its fundamental rights are also getting the quality of protection they need.

We have heard from Sen. Mark and Sen. Mungalsingh a lot about the way in which this Bill might violate some of the fundamental constitutional rights. I have to say that was where I started when I read the Bill, by looking at it side by

side with sections 4 and 5 of the Constitution. With very great respect to them, there is no way in which this Bill, in my judgment and my reading, contravenes any of those constitutional rights.

In reading the Bill as a whole I think that there are many checks, if you wish, and safeguards which the Bill provides. In the first place, it provides for hearsay evidence, but we know that is a term of art. We had an excellent explanation from Sen. Seetahal, S.C. about hearsay evidence; that it is something different from hearsay in the popular meaning of that word.

Secondly, the Bill provides that hearsay evidence, according to the legal interpretation, will only be eligible in certain circumstances. Those circumstances are very clearly defined and limited in section 15C and they are pretty exigent circumstances within which a written statement will have to fall and to qualify before it can be admitted as evidence. I think throughout the provisions it is clear that the Bill provides for the due process and the normal process of law and judicial judgment to prevail as to what is admissible, what meets the test and what does not. I am satisfied that those safeguards are numerous. They are the right kinds of safeguards, so that the Bill, although it seeks to redress the balance in the weight of the law of evidence, does provide also for the discretion of the Judiciary in determining whether and in what circumstances this particular provision will apply.

However, it is important that we remain alert to potential for abuse of a Bill such as this. When the Government brought the Anti-terrorism Bill last year, or maybe it was 2005, I supported that for very much the same kind of reasoning for which I am supporting this Bill. But we have seen recently in probably the first action that has been brought against a citizen—[*Interruption*]

Sen. Jeremie, S.C.: I am anticipating that you are going to talk about the detention of Mr. Inshan Ishmael. [*Crosstalk*]

Sen. Mungalsingh: You know his name.

Sen. Jeremie, S.C.: I do not know his name. [*Crosstalk*] I am assuming that is what you are going to talk about. I made a telephone call to the Commissioner of Police to find out, because I was quite disturbed about the use of the Anti-terrorism Act.

Sen. Mark would you, please—Mr. Vice-President, he is disturbing me.

Sen. A. Cropper: Mr. Vice-President, I have given way; may I listen to the Attorney General, please.

Mr. Vice-President: Sen. Mark.

Sen. Jeremie, S.C.: I can assure you that the Commissioner of Police has given me his word, because I was quite clear with him, that this Act was passed for specific purposes and I was hearing on the radio that this man had been detained under the anti-terrorism provision. Of course, he was detained overnight, so there was no time period which would prove beyond reasonable doubt that he was, in fact, detained under X or Y. The Commissioner of Police assured me that was not, in fact, the case. That was hours after the alleged detention. As soon as I came out of Cabinet, I called him. I knew nothing of it, but I heard about it and I was quite distressed.

As a matter of correction, it was not the first prosecution; it was not the first time the Act has been used. It has been used to prosecute Mr. Yasin Abu Bakr, who goes on trial next month in relation to anti-terrorism offence and it also has been used in relation to the brother Enyahuma El, who was second in command at the Jamaat. The Act was not used in the case of Mr. Inshan Ishmael.

Sen. A. Cropper: Mr. Vice-President, I thank the Attorney General for his explanation. I admire his clairvoyance; he predicted what I was going to say.

I think the point, Mr. Attorney General, is still valid, if I may. In a Bill like this, if it was to become an Act, we do need to guard against abuse and be alert to that across the board; not only with respect to this or the Anti-terrorism Act. It is important when incidents occur where there is an appearance of abuse of legislation, that attempts be made to reassure the population what are the facts of the matter.

We repeatedly say in this Chamber also that it is so difficult to know what one might trust and believe in terms of what one reads. Our quality of reportage in the country is not very high. It was widely reported that was the case; that the gentleman in question was detained under the Anti-terrorism Act. If it was not so, then some strenuous efforts have to be made to assure the population that was not the case. We bring good legislation into disrepute to the extent that we allow apparent abuses of it to go unchecked and unclarified. I strongly recommend to the Attorney General that it still be done in order to clear up that circumstance for the population as a whole.

With a Bill like this we also need to be very astute about the possibility and potential for abuse. Sen. Prof. Deosaran has canvassed all the reasons why we need to be very careful here, because some fundamental constitutional rights are being called into question. We need, therefore, to make sure that is not the

perception of the population as a whole, based on comments that are made without the reasoning and full explanation behind them.

Finally, the law must evolve with the needs and circumstances of the society. I do not think that we can hope to regulate this society or any society, if we are complacent about reforming the law and upgrading the law commensurately with the needs and circumstances of the society. I believe that this Bill will send a very good message to the population that this Parliament is serious about working on all fronts and doing something about the crime and violent situations in the country, and that it is also taking into account the need for protection of their rights and their safety and their freedom of movement also, and not just those of persons who are accused and brought before the court and the judicial system.

Thank you. [*Crosstalk*]

Sen. Dr. Tim Gopeesingh: Mr. Vice-President, at the onset let me indicate that the Opposition is strongly committed to the reduction and possible elimination of this high wave of criminal activity that is taking place in Trinidad and Tobago at the moment. [*Desk thumping*] We are strongly committed to the complete elimination of all kidnappings. [*Desk thumping*] One kidnapping is too much in this country. We are also committed to the elimination of witness tampering; witness contamination and witness elimination. [*Desk thumping*]

For a government to bring legislation that seeks to introduce hearsay evidence into criminal trials is nothing short of an admission that it is incompetent and incapable of dealing with a crime wave that is unprecedented.

At first glance, this Bill comes across as a desperate act; a panic reaction to the stark reality of life in Trinidad and Tobago in terms of the witness protection situation, witness elimination and witness tampering. The life in Trinidad and Tobago that is now marred by daily bloody murders, elderly couples being brutally beaten to death, innocent children being raped and tortured and hardworking taxpayers being kidnapped and brutalized; in short, a country that has sunk to the depths of darkness.

To seek to bring in legislation that contravenes the essential foundation of the rule of law, that of the right of innocence until proven guilty, is, in fact, a paranoid, desperate act on the part of the Attorney General and the administration, because this is exactly what this legislation does; it contravenes the foundation of the rule of law and undermines the democratic legal systems which remain the last bastion of hope in this country where the elected government continues to show a cavalier disregard for fairness in governance. [*Crosstalk*]

Let us look at the Constitution of Trinidad and Tobago, Chapter. 1 where it says:

> "It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without of rights and discrimination by reason of...
>
> (b) the right of the individual to equality before the law and the protection of the law;"

Bringing hearsay evidence and admitting hearsay evidence does not protect the innocent citizen in the rule of law.

Section 5(e) of the Constitution says:

> "deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations:
>
> (f) deprive a person charged with a criminal offence of the right—
>
> (i) to be presumed innocent until proved guilty according to law,..."

We know that witnesses and accused persons, for example, always complain that statements are taken by force and under duress or that the written statement of the police conflicts with their version of the facts. What about the sobriety— [*Interruption*]

Mr. Vice-President: It was borne out by two other persons.

Sen. Dr. T. Gopeesingh: What about the sobriety or state of mind of the witness, whether he was beaten or threatened? Remember you do not have the opportunity to test the witness; so if you bring in hearsay evidence and it is admitted under the Attorney General's Department and that evidence comes through the court, the witness is not there to be cross-examined. This moves away from the fundamental tenet of the Constitution of Trinidad and Tobago, which is to deprive a person of his right to a fair hearing. A fair hearing indicates that there must be the ability to cross-examine a witness in court.

This situation puts the burden on the accused person. You could imagine Mr. X hearing something from somebody, Mr. Y; Mr. X comes to tell the Attorney General or his office that there is something he heard? My colleague mentioned a few cases of what he has heard. What if a fabricated statement is made?

Sen. Jeremie, S.C.: It is not gossip. [*Crosstalk*]

Sen. Dr. T. Gopeesingh: Hearsay evidence indicates a number of things. [*Interruption*]

Mr. Vice-President: Sen. Dr. Gopeesingh, when you tell me that, I wonder if I heard the same thing that your colleagues congratulated Sen. Seetahal, S.C. for. It does not mean the gossip that Sen. Mark obviously referred to.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, I speak on behalf of myself. [*Desk thumping*] [*Crosstalk*] Hearsay evidence, when brought to the Attorney General's Department, or whether it comes through anyone—[*Interruption*] Just give me a chance to speak please; you would have your say. [*Crosstalk*]

Sen. Mark: "Talk after, nuh; de man making his contribution!"

Mr. Vice-President: Sen. Mark, even though that is so, it is not your responsibility to do that.

Sen. Mark: I was looking to you for protection.

Mr. Vice-President: Sen. Dr. Gopeesingh, please continue with your contribution. I would really prefer if you do not go over what has been gone over by several persons already.

[*Sen. Dr. Gopeesingh rises*]

Sen. Dr. T. Gopeesingh: Mr. Vice-President, I am making—[*Interruption*]

Mr. Vice-President: Sen. Dr. Gopeesingh—

Sen. Dr. T. Gopeesingh: I did not see you standing there; I thought that you were finished.

Mr. Vice-President: And you are looking at me and talking? [*Laughter*]

Sen. Dr. T. Gopeesingh: I am now looking at you. [*Crosstalk*]

Mr. Vice-President: Let us do this the right way.

Sen. Dr. T. Gopeesingh: You are preempting me, Mr. Vice-President. [*Crosstalk*] I have something to quote from the Australia situation, which supplements my point. Please allow me the time. They have their way; we must have the say. We are in the minority. We must be allowed the privilege of speaking.

Mr. Vice-President: Sen. Dr. Gopeesingh! I am trying to say to you, I do not wish a lecture, okay. I am allowing you to go ahead, please, let us see where this goes.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, it is stated in section 15B:

"In any criminal proceedings, evidence of criminal conduct which may be contained in the document may be admissible in evidence if the document—

(a) is the best or only evidence of that conduct which is alleged by the prosecution; and.

(b) is obtained by or under the hand of the Attorney General if any matter related to mutual legal cooperation pursuant to the Mutual Assistance in Criminal Matters Act, 1997." [*Crosstalk*]

7.00 p.m.

Sen. Mark: Address the Vice-President.

Sen. Dr. T. Gopeesingh: Okay. I am speaking about hearsay evidence coming from an international country under the Mutual Assistance in Criminal Matters Act and I will justify what I am saying now.

Mr. Vice-President, this affects the Director of Public Prosecutions' (DPP) right to go forward with a case, he must be the person to decide whether a case must go forward. It affects whether the Commissioner of Police will go on with a case. Once something comes through the Attorney General's Department under the Mutual Assistance in Criminal Matters Act, the DPP and the Commissioner of Police are bound to move with the case.

Sen. Mark: Of course.

Sen. Dr. T. Gopeesingh: We are saying that this burden is put on the accused and anyone can say anything internationally under the mutual assistance programme and then it has to be heard in the court.

The Attorney General alluded to the fact that the Bill is not a panacea of all; it tips the scale of justice in terms of balance while gaining respect for individual human rights. He said that the central authority is found in this Act of 1997 reposed in the Attorney General. We are saying that it is time, based on what is happening now in the country that the central authority not be reposed anymore under the Attorney General and we want to see that part of the 1997 Act changed and amended to be under the DPP.

So we are not agreeing with section 15B where in any criminal proceedings, evidence is obtained under the hand of the Attorney General in any matter related to mutual legal cooperation.

He said there are 15 countries affected under the mutual legal cooperation; 12 are located in the central authority in the office of the Attorney General, and three in the hands of the DPP.

Sen. Mark: Why not here?

Sen. Dr. T. Gopeesingh: Why are they not here? He said that not all jurisdictions have an Office of the DPP, but Trinidad and Tobago has a jurisdiction and an Office of the DPP. Why is this not reposed with the DPP rather than the Attorney General, particularly in light of what is happening in Trinidad and Tobago and in light of the case where the—I want to quote from a judgment. This is a completed case so I am free to quote from it.

Sen. Mark: Of course!

Sen. Dr. T. Gopeesingh: The DPP is under no obligation—

Mr. Vice-President: From where are you quoting, Sen. Dr. Gopeesingh?

Sen. Mark: Just make reference, make reference.

Sen. Dr. T. Gopeesingh: The Republic of Trinidad and Tobago in the Court of Appeal, Criminal Appeal No. 5 of 2006 in the matter of the State and Naraynsingh and Ramisir.

On page 19 of the judgment, the DPP is under no obligation to obey any instructions or direction from the Attorney General whether arising out of such discussions or otherwise.

If this comes under the Mutual Assistance Treaty through the Attorney General, can the DPP reject it? This Court of Appeal judgment is saying he is under no obligation to obey any instructions or directions. So if the hearsay evidence comes through the Attorney General's Department in the Mutual Assistance Programme could the DPP stop the case from going ahead? The DPP is under no obligation to obey any instruction.

Mr. Vice-President, just a while ago your predecessor, Madam President, indicated—when my colleague raised the question of one of our Independent colleagues—that the Office of the Director of Public Prosecutions should be independent and there should be no discussions with anyone whatsoever on matters.

I want to quote what the *Hansard* says and to show that in fact, this was said. Sen. Seetahal S.C. stated:

"Madam President, this Bill which proposes to amend the Evidence Act is seen by the Office of the Director of Public Prosecutions as a welcome addition to the criminal evidence law. I have been informed of this by that office up to today. The office supports the three sections from 15C to 15E. In relation to section 15B, the clause dealing with evidence, they do not have any strong views opposing it and that is from the Deputy Director."

Mr. Vice-President, we have information to the contrary that the Director of Public Prosecutions is not supporting this move under the mutual assistance agreement to go under the Office of the Attorney General. We understand that there are problems between the Attorney General and himself and we know that based on what is happening in the country at the moment under the proposed Constitution of this administration—

Sen. Jeremie S.C.: Would you give way Senator, you made a statement of fact—

Sen. Mark: No, we said we understand.

Sen. Dr. T. Gopeesingh: We understand—

Sen. Jeremie S.C.: Okay, well let me clear up your understanding please.

Sen. Dr. T. Gopeesingh: No. You will clear it up at the end, you will have your chance at winding up, I am making my contribution now.

We understand in the proposed Constitution as well, and I want to quote from it, that is the draft Constitution of the Republic of Trinidad and Tobago of July 2006, Chapter 6, "The Director of Public Prosecutions and the Ombudsman"—117(2) says:

"There shall be a Director of Public Prosecutions for Trinidad and Tobago whose office shall be a public office.

(3) The Director of Public Prosecutions shall discharge his functions under this Constitution and any other law under the general superintendence of the Attorney General."

Sen. Mark: Now, what is this? [*Interruption*]

Sen. Dr. T. Gopeesingh: This administration wants the DPP to be under the jurisdiction of the Attorney General. [*Interruption*]

Mr. Vice-President: Sen. Mark!

Sen. Dr. T. Gopeesingh: So when this Government gives us this piece of legislation and hides it by saying it is under the Mutual Assistance in Criminal Matters Act, hearsay evidence—

Sen. Dr. Saith: Mr. Vice-President, the Senator made a statement that he read a draft Constitution and said that is the Government's intention. I want to make it clear that is not the Government's Constitution, that is one that is out for public comment and presumably you will comment in due course.

Sen. Dr. T. Gopeesingh: Thank you for clarifying, I am glad to hear that the Government's view on it is that the DPP will not come under the aegis of the Attorney General.

Mr. Vice-President: Did somebody say that?

Sen. Dr. T. Gopeesingh: I think that is what he is saying

Sen. Mark: That is the essence of what he said.

Sen. Dr. Saith: People are looking at you, you know.

Sen. Mark: "Yeah, yeah, people looking at you too."

Sen. Dr. T. Gopeesingh: "People looking at you as well."

Sen. Mark: "Dey looking at de bunch of fascists."

Sen. Dr. T. Gopeesingh: Mr. Vice-President, when we touch the raw nerves it affects the sensitivity, but we will move on.

This judgment also said that the Attorney General also has an interest and is more properly concerned with policy as it relates to the development of the law and legal systems, not to get hearsay evidence under Mutual Assistance Treaty, but he is supposed to be on policy matters. That could include the question of the desirability of retaining the old common law discretion exercised by the trial judge or abolishing it by statute.

The DPP, on the other hand, has to focus on the individual prosecution and it is the DPP who should be collecting the evidence, not the Attorney General.

Sen. Mark: Not the Attorney General.

Sen. Dr. T. Gopeesingh: The DPP must exercise his discretion in accordance with the well-established guideline; he must seek to do justice in the particular case.

Mr. Vice-President, I thought I should read this into the *Hansard* to show that the Attorney General must have no role whatsoever in any prosecutorial matters. [*Desk thumping*] He must be there for policy directions ensuring that the DPP's department gets the funding and report on important state matters—

Sen. Mark: And keep him informed.

Sen. Dr. T. Gopeesingh:—and keep him informed, but he must not interfere with any type of evidence whatsoever. So we do not, we cannot, and will not ever support anything that is coming under the Attorney General, whether it is hearsay or whatever it is, he has nothing to do with prosecutorial matters in light of what we have seen.

Sen. Mark: Nothing!

Sen. Dr. T. Gopeesingh: We have seen where the Attorney General's Office misled the Appeal Court and the State's attorney in the Maha Sabha's case by withholding significant information. It was on the news and all over the television that the Attorney General's Department withheld things from the Appeal Court. [*Desk thumping*] How can we trust the Attorney General's Department when it withheld information?

Sen. Mark: "How can we trust him? We cyar trust him."

Sen. Jeremie S.C.: Sen. Dr. Gopeesingh—

Sen. Dr. T. Gopeesingh: Mr. Vice-President, this is what the Privy Council said.

Sen. Mark: We will quote from the Privy Council.

Sen. Dr. T. Gopeesingh: What is the point of order?

Sen. Jeremie S.C.: There is no point of order. Thank you for giving way. You are misleading the Senate.

Sen. Dr. T. Gopeesingh: Really?

Sen. Jeremie S.C.: You have a statement by Mr. Martineau with whom I exchanged correspondence—

Sen. Mark: No, this is from the Privy Council.

Sen. Jeremie S.C.:—there is nothing in the Privy Council's decision which suggests that the Attorney General's Office misled anyone. That is not the case. I know the facts of the case, you are playing fast and loose with the truth as your

friend. You are learning quickly from him you know, you are learning very quickly from him.

Sen. Mark: [*Inaudible*] Take your seat.

Sen. Dr. T. Gopeesingh: He is imputing improper motives, but I will not go into that.

Mr. Vice-President: Sen. Dr. Gopeesingh, what you said also bordered on imputing improper motives. Do not go there please.

Sen. Mark: Quote from the Privy Council man.

Sen. Dr. T. Gopeesingh: I want to quote from the Privy Council. The Privy Council found that the Government had infringed the Maha Sabha's right to freedom of expression and was guilty of arbitrary and capricious conduct and had misled the court by withholding crucial information. That is what the Privy Council said.

Sen. Mark: That is the Privy Council's judgment. "Go ahead, de Vice-President say go ahead, yuh going good."

Sen. Dr. T. Gopeesingh: Mr. Vice-President, what about the fact when the judge of the Supreme Court made an order that the Chief Justice should not be arrested and the Attorney General showed utter contempt to the court and criticized the judge—

Sen. Mark: Yes.

Sen. Dr. T. Gopeesingh: I am just trying to show you the climate under which we are operating. The Office of the Attorney General is quoted by the Privy Council's judgment as having misled the court by withholding crucial information and then—

Hon. Senator: "Why yuh doh talk about the …scandal?"

Sen. Mark: No. "You cyar tell we what to talk about. Talk about the Privy Council."

Sen. Dr. T. Gopeesingh: No, the Privy Council.

Mr. Vice-President: Sen. Mark, you cannot be disrupting the order of business.

Sen. Mark: No, I am not disrupting.

Mr. Vice-President: If Sen. Dr. Gopeesingh is making his contribution allow him, but there are several times when you are sounding louder that he.

Sen. Mark: Sorry about that, Sir, my apologies.

Mr. Vice-President: You cannot do that. I think as the Leader of the Opposition you should set the example for the others.

Sen. Mark: Thank you very much, Mr. Vice-President, I take your guidance.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, I can assure you that my brother and my colleague, Sen. Mark—

Mr. Vice-President: I did not ask you about it.

Sen. Dr. T. Gopeesingh: What I am saying is that he never disturbs me, he gives me advice and support and I am grateful for his support and advice.

Mr. Vice-President: Sen. Dr. Gopeesingh, I did not say he disturbed you, I said he disturbed the order of business here and that is out of order.

Sen. Mark: Thank you very much, Mr. Vice-President. Continue, Tim.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, to allow the Attorney General to decide what he is going to request and in relation to whom he is going to request it is totally untenable, unacceptable, and we cannot support it.

Sen. Mark: Sure.

Sen. Dr. T. Gopeesingh: This undermines the role of the DPP and it is potentially a scandal as far as the process of the rule of law is concerned.

Mr. Vice-President, when anyone from abroad wants to have something admitted into the courts of Trinidad and Tobago there is a process whereby it can be done very easily under the Mutual Assistance in Criminal Matters, they do not have to go to hearsay evidence.

Request by Trinidad and Tobago to Commonwealth countries for assistance under the Mutual Assistance in Criminal Matters where there are reasonable grounds to believe that evidence or information relative to any criminal proceedings may be obtained. If in a Commonwealth country evidence is taken from any person, information is provided, judicial records, official records, or other records of documents or other articles are produced or examined, and samples of any matter or thing are examined or tested, a request may be transmitted requesting that assistance be given by that country in so obtaining the evidence of information.

Under the Evidence Act, Chap. 7:02 they can go to a Consular Office of Trinidad and Tobago in any foreign place in testimony of any oath, affidavit, or act administered under Part III of the Evidence Act, or done by or before any such person shall be admitted in evidence in any court of Trinidad and Tobago without proof of a seal or signature of his official character.

Therefore, anybody who wants to give information on a particular matter from an international country that the Government requests, can easily go to a Diplomatic Mission or Consular Office internationally, put that evidence into place and have it stamped and sealed and it can be admitted into the courts of Trinidad and Tobago.

The court is not bound to require the attendance of the expert as a witness if it is of the opinion that a request for such attendance is made for the purpose of vexation, delay, or defeating the ends of justice. So already there exists the situation where evidence can be given without the person coming if the court feels it is going to be vexatious in bringing the person. So there is no need now to go under this thing called a mutual assistance, a camouflage, and as my colleague said designer legislation.

Sen. Mark: Yes, yes, our colleague.

Sen. Dr. T. Gopeesingh: In this section Government experts refer to public officers. So internationally, we do not need to go under the Mutual Assistance Programme to get evidence under hearsay for the Attorney General to look at it. Bring it through the court.

Sen. Mark: Ulterior motive.

Sen. Dr. T. Gopeesingh: There is something that is sinister in clause 2, section 15B of the Bill and this should be eliminated because there exists now under the old Evidence Act, a system whereby anyone wanting to give evidence on a particular situation can go to a Diplomatic Mission or Consular Office and give it and the court will determine whether it wants that person to come or not.

Do you know what he is trying to prevent here? Do you remember in Mr. Basdeo Panday's case when the persons from the bank had to come and Attorney Cassel said they are here now and the case must be heard? He wants to prevent that, he just wants their deposition so nobody could cross-examine them when they come to Trinidad. Let their evidence be put in a document and that is it. So you want to prove people guilty without having the ability to cross-examine them? We cannot support that.

Mr. Vice-President, you know somebody can say something internationally under the Mutual Assistance Treaty, you concoct a story, and the person is charged. Who the onus falls on then? The person who is charged now has to go to court, spend millions of dollars to defend himself because this is mutual assistance, it is international type of law with which he is dealing. Anybody can concoct a story. I have been through that.

I am an example of being charged for something that was totally unnecessary and had to spend over a million dollars to defend myself, and my reputation almost went on the bunkers as a result of a false charge. When it went to the magistrate he said those are charges not known to law and the State appealed the matter and went to the High Court, the High Court judge said that should have never been admitted under the judicial review. So how many are there like me? Luckily I was able to defend myself and my reputation internationally, but how many more would have to withstand that?

This can do anything to anybody at any time. It could be you, Mr. Vice-President, sitting in Tobago at any time and they say under the Mutual Assistance Treaty you are charged for drug laundering or something else and you have to defend yourself. So the onus is on you. The burden of proof is on the accused, and it must never be so. It must be on the prosecution. [*Desk thumping*]

Mr. Vice-President, the danger of seeking to allow hearsay evidence into criminal charges is quite evident. In a review of the proposed Australian Evidence (Amdt.) Bill, 2005 the Australian Attorney General, Joanna Davidson pointed out that that this would give rise to issues of consistency with a guaranteed right to a fair hearing and the right to examine witnesses for their protection. That is the Attorney General of Australia saying that of the Evidence (Amdt.) Bill, 2005. Australia is telling us that and you want us to accept that in Trinidad and Tobago? A joint media release of Australian Law Reform Commission to review the Evidence Act and management of federal offenders.

Mr. Vice-President, we appreciate that Government really cannot deal with the crime dilemma it created in this country and is now seeking to remedy it by any means necessary, but do not bring this Bill. This is like the action of an incompetent child going through school, college and so forth and not doing well, failing, and when it is exam time try to rush to do something and still fail. This Government has been failing and failing all the time and in election year, it knows it is going to fail so it tries to rush something. [*Desk thumping*] So it is just like

an incompetent child. This regime is running the Government just like a delinquent child. It has not done the work for all the years and at election time is desperate to show the population it wants to perform.

Sen. Mark: And they were in bed with the Jamaat.

Sen. Dr. T. Gopeesingh: Nothing is wrong with that strategy if the Government honestly believes that it can fool the population into voting for it by bringing half-baked laws like this to solve the biggest problem in this run-up to election.

We have no objections. Unlike the PNM, the UNC faces reality we do not bury our heads in the sand, we are not like ostriches. We know the population of this country is not stupid and will not be fooled by these attempts. So when you say you are bringing legislation to prevent witness tampering and witness elimination and all of that, you are not trying to fool the population. We know this is only a little fly-by-night thing you are trying to introduce and bringing it in under the disguise that it must come through the Attorney General under the Mutual Assistance Treaty. It is already in the Evidence Act. You do not need to bring any new legislation, everything is contained in the Act already but you want to introduce something about charging people from Trinidad and Tobago by somebody saying anything, and then you bringing it through, and the DPP would not be able to control anything.

Sen. Mark: It is a smokescreen. [*Crosstalk*]

Sen. Dr. T. Gopeesingh: Have some patience; I have probably half an hour.

Sen. Mark: "The population tired ah all yuh, girl."

Sen. Dr. T. Gopeesingh: You all should demit office as fast as possible and the faster you demit office, the better it is for the population.

Sen. Mark: Yes, I say so. I support that.

Sen. Dr. T. Gopeesingh: The Australian Attorney General said in a review of that Act that the ability to admit hearsay evidence is subject to requirements as to the reliability of the statement and either the witness being unavailable or the judge, considering that undue expense and delay would be caused if the maker of the statement were required to be a witness.

She said international jurisprudence—and you are quite aware of it, Attorney General—also makes clear that it is permissible to use statements made by persons who do not give oral evidence at the trial provided fairness to the accused

is maintained. Do you think we have guarantees that fairness in this court exists now in Trinidad and Tobago? Fairness to the accused must be maintained.

Sen. Mark: And he withheld evidence?

Sen. Dr. T. Gopeesingh: That is right. She warned that there is a risk that the rights to a fair hearing and to examine witnesses for the protection may be breached where a conviction is based solely upon hearsay evidence.

The European Court of Human Rights also said—

Sen. Mark: The AG quoted that.

Sen. Dr. T. Gopeesingh: The Attorney General quoted the European Court of Human Rights and if I can find—

Sen. Mark: Conveniently.

Sen. Dr. T. Gopeesingh: Conveniently, yes. The European Court of Human Rights has required that there be some evidence that supports the charge other than the hearsay evidence. [*Desk thumping*] So whatever we bring in Trinidad and Tobago we will go through the Magistrates' Court and be proven wrong because we are not getting justice in Trinidad and Tobago; we will go through the High Court, we know we cannot get justice; we will go through the Appeal Court, but we will win in the Privy Council and if we lose in the Privy Council, you remember the European Court of Human Rights has the final say.

Sen. Jeremie S.C.: Mr. Vice-President, he is imputing improper motives to the Judiciary.

Sen. Mark: What Judiciary? How?

Sen. Jeremie S.C.: Our Judiciary of Trinidad and Tobago.

Sen. Mark: We have no confidence in it.

Mr. Vice-President: Sen. Mark, is this your contribution?

Sen. Mark: Sorry Sir.

Mr. Vice-President: Sen. Dr. Gopeesingh, could you please not make statements—you are making some very sweeping statements.

Sen. Mark: He was quoting.

Mr. Vice-President: No, he was not quoting a while ago. You did not quote from the European Human Rights Organization, you made some statements in-

between there, and those are the statements the Attorney General is talking about. Do not do it.

Sen. Dr. T. Gopeesingh: "All right, ah hear yuh, okay."

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

Sen. Mark: "Already, oh gawd."

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

Question put and agreed to.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, somebody has switched off my microphone. Oh no, it is on.

Sen. Joseph: This is not Monday night forum.

Sen. Dr. T. Gopeesingh: The European Court of Human Rights said the fact of the matter and another very real danger of hearsay evidence is the fact that absent witnesses can be coerced into making statements against innocent persons. So, we are going to the Privy Council.

Sen. Mark: Yes, this matter is going to court, definitely.

Sen. Dr. T. Gopeesingh: This matter is going to go, so if you pass the legislation today this is going to be rendered null and void and unconstitutional right away.

Sen. Mark: Yes, yes.

Sen. Dr. T. Gopeesingh: So if you want to pass legislation we are going to take it to the courts.

Sen. Mark: Yes, let them go ahead.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, in the *Miami Herald* an article published on January 18 speaks about the Pentagon drafting a manual for upcoming detainee trials that would allow suspected terrorists to be convicted on hearsay evidence, and in some instances to be put to death.

The article says according to the manual, a Guantanamo terror suspect defence lawyer cannot reveal classified evidence in the person's defence until the Government has a chance to review it. As required by law, the manual prohibits statements obtained by torture, cruel and inhumane or degrading treatment as

prohibited by the Constitution. However, the law does allow statements obtained through coercive interrogation techniques if obtained before December 30 and deemed reliable by a judge.

Sen. Mark: Hearsay.

Hon. Senator: What is the relevance?

Sen. Dr. T. Gopeesingh: That relates to hearsay. So you are wondering about the relevance of what I read here about the proposed Bill?

Sen. Mark: "Doh take him on, talk to the Vice-President."

Sen. Dr. T. Gopeesingh: Through you, Mr. Vice-President, show us in this Bill where it is spelt out how this hearsay evidence will be obtained. If the Attorney General can tell us how this hearsay evidence will be obtained, will the police be able to coerce witnesses who will later be declared absent to the court? What exactly will be going on here? What is this legislation seeking to do? It is putting the lives of innocent people into the hands of the police and in a country where a rumoured death squad is in the police service running amok and killing innocent citizens and shooting babies, that is a dangerous thing.

You see the crux of the crime problem remains detection, so why is the Government not focusing its energies there? Please do not rise for the millionth time Minister Martin Joseph and Attorney General and talk of police training and blimps and so forth. The fact is whatever you all have done in the past few years in this department amounts to a waste of time because it has not worked. How can you expect any reform of the service to work when this Government entertained and courted gang members with lucrative CEPEP and URP contracts?

Mr. Vice-President, this Bill as it is, on close examination, is a blatant move by the Government to politicize prosecutions officially because we all know that since this administration came into office it has been hounding any and every body because of political vindictiveness

7.30 p.m.

The big question about this Bill is why give the Attorney General the right of collecting the hearsay evidence; why a political figure? So you have to answer that.

Hon. Member: Thank you.

Sen. Mark: "Doh" worry, he has 10 more minutes again, five more. Mr. Vice-President, how many more he has? [*Laughter*]

Sen. Dr. Gopeesingh: "Doh" worry. If this Bill is to be properly implemented it requires the cooperation of a judge who is fair and impartial. I just want to re-emphasize that point and I leave it for everybody to understand what it is I am saying.

I want to go back to the Australian Attorney General's 2005 Review that criminal trial procedures could operate so that even where hearsay evidence is admitted a judge, with or without a jury, could determine that there is no case to answer. There is a broad discretion of the judge to dispense with the requirement including, on the basis that the interest of justice requires it. She points out that the question is whether in a particular case, the preclusion of the accused from personally cross-examining witnesses may give rise to a breach of the right to a fair hearing and this is what we have been arguing. The Australian Attorney General says:

> "The preclusion of the accused from personally cross-examining witnesses may give rise to a breach of the right to a fair hearing."

And that undermines the constitutional right of the right of liberty and freedom and the right to a fair hearing and the proper rule of law for any citizens. There are a few issues on the proposed legislation Bill other than what my colleagues spoke about. I would personally like to see this part about the mental condition removed altogether. So that such person:

> "(a) is deceased;
>
> (b) is unfit by reason of his bodily…condition…"

Forget mental condition, because you cannot have any person with mental conditions giving evidence; so that should be removed. Section 15C(1)(e) which states:

> "is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person."

You are telling me that no Government can take proper steps to protect a person. We brought on the Witness Protection Act in 2000 and what has happened to it? This Government is admitting by this piece of legislation that they cannot protect witnesses. [*Desk thumping*] Not only witnesses, they have to protect the families of witnesses and the friends of witnesses, and this piece of legislation admits that they are unable to do it and therefore we cannot go along with that. We say that they have a right to ensure that the Witness Protection Programme comes on stream.

If the population feels that witness elimination and witness tampering is going on at the moment, it is the right of the Government and the administration to ensure that those witnesses are protected. But the people have no confidence in the witness protection and this is why they are not coming to give evidence. If it was working well and people were protected under the Witness Protection Programme, they would come forward and give evidence. We have nothing against the question of eliminating the whole problem of witness tampering and so on, but we say, do not do it in the way that they are proposing in this Bill.

In summary, Mr. Vice-President, I just want to close and say that—my colleague just reminded me that we are not in support of section 15E, which says we do not want that to:

> "…apply to any preliminary enquiry held under the Indictable Offences (Preliminary Enquiry) Act"

Because we want a judge to be able to deal with it; we do not want a magistrate to be able to deal with it. Because any type of evidence can come from, for instance, internationally, a magistrate has to deal with it; what is exactly happening in the Magistrates' Court now, and you know the matter, I am not going to talk about it because it is sub judice, but we do not want that to occur in the preliminary courts, it must be only in the High Court.

In closing, I want to emphasize that this Bill is useless in that it amounts to a panic legislation; that it will not tackle the essence of crime, which is prevention and detection. It has a sinister political agenda and relies too much on the unbiased execution of the police and the Judiciary, which we all know is impossible in this country today.

This Bill violates the basic rule of law, and a fundamental guarantee of innocence until proven guilty, to citizens. Most importantly, it represents the Government's ongoing move to control the prosecutorial arm of the State. I want to repeat this. Most importantly, it represents the Government's ongoing move to control the prosecutorial arm of the State, clearly for political reasons given their history. So in no way can we support this legislation.

The UNC is not about encouraging paranoia on the part of the Government. We say, if you are really serious about crime solving then have patience. You have proven you are helpless to deal with it but have patience. The crime dilemma will be solved without these types of draconian laws; it will be solved

within a few months. All the PNM has to do is wait, because in a few months, when the election date is set the people will solve this crime dilemma by voting out the PNM who caused it in the first place. [*Desk thumping*] [*Laughter*]

Thank you very much, Mr. Vice-President.

The Minister of Legal Affairs (Sen. The Hon. Christine Kangaloo): Thank you very much, Mr. Vice-President. I am very happy to join in the debate on the Bill that is before us today. In preparing to speak today, I prepared in a certain way and then I heard Sen. Seetahal, S.C. speak and I said there is absolutely nothing that needed to be said on this Bill again. Then came Sen. Mungalsingh and I sighed and said, okay, I may have to speak or someone else on this side may have to speak. Then I heard Sen. Prof. Deosaran speak and I said, okay, I probably will not have to speak because the issues are so clear.

Then came Sen. Ahmed; after Sen. Ahmed, Sen. Cropper spoke and again I said—because each time you are hearing the Independent Senators speaking and the are explaining the Bill along the same lines the Attorney General had spoken, but the Independent Senators are clarifying and we are hearing reason—well okay, and the "whodata", Sen. Dr. Gopeesingh spoke [*Crosstalk*] and it is because of what Sen. Dr. Gopeesingh had said that I decided to make a brief intervention for what it is worth.

Sen. Mark started off very proudly by beating his chest and telling us how long he has been in the Senate; I think it is some 17 years, and he has served in this Senate for some 17 years and he has never seen such dangerous legislation. Almost three-quarters of his contribution dealt with the first clause of the Bill, which dealt with the Central Authority. Despite all his years of being in this Senate, he just could not get it right. [*Desk thumping*] Why do I say this? Because I went back into the *Hansard* of Tuesday, October 14, 1997. How long would Sen. Mark have been in the Senate at that stage? That was when the Mutual Assistance in Criminal Matters Bill was debated, brought to a conclusion and passed in the Senate.

Listen to this, Mr. Vice-President, the then Attorney General who brought the legislation on behalf of the then Government, this is what he had to say in dealing with the question of whether the Attorney General's Ministry is the appropriate ministry for the Central Authority. The then Attorney General, Mr. Ramesh Lawrence Maharaj said:

> "We must remember that what we are dealing with here is a bill which will be administering law and have legal considerations being considered. When one

looks at the scheme of other legislation, one sees that the other countries have put the Attorney General as the minister, because that is the minister responsible in respect of legal principles, laws and in respect of the guardian of the Constitution."

The then Attorney General went on to say:

"It is in that context that the countries which have gone this route have put the Attorney General as the central authority."

He said:

"...in the Ministry of the Attorney General one has the Solicitor General's Department and the office of the Director of Public Prosecutions. These are the two departments that will have to administer this Bill."

That is what the then Attorney General, Mr. Ramesh Lawrence Maharaj said.

Sen. Mark: What is the relevance?

Sen. The Hon. C. Kangaloo: What is the relevance, Mr. Vice-President? The relevance is that Sen. Wade Mark sat in this Senate in 1997; was a part of the Government that introduced this Bill; listened to the rationale that was given by the then Attorney General; I think he was even a Member of Cabinet at that time—

Sen. Mark: "Yuh" think? I was.

Sen. The Hon. C. Kangaloo: I cannot remember when you were fired. I do not remember when you were fired. I do not remember when he was fired, Mr. Vice-President, but I believe in 1997 he was a part of the administration. You know what, Mr. Vice-President, to hear him, to hear—well, Sen. Dr. Gopeesingh could be forgiven because he always wanted to be in the Cabinet; so he could be forgiven—[*Laughter*] [*Crosstalk*]—he was not in the Cabinet at that time. But to hear Sen. Mark speak and to base almost three-quarters of his contribution on this issue was just an eye-opener for me.

You know what, they are saying that the country will not be fooled by the Government; the country will see through us. Hah, I say to them, because anybody who listened to what Sen. Mark and Sen. Dr. Gopeesingh had to say today will understand that when it comes to governance they do not have a clue. [*Desk thumping*] Because if you could have been part of the reasoning and you understood the reasoning at the time, why would you come and just turn full circle and present a completely different argument at this time?

Sen. Mark: We are a democratic Government.

Sen. The Hon. C. Kangaloo: For those who are looking on and for those who are hearing, let them understand what it means; how they will attempt to govern; by complete "vaps". [*Desk thumping*]

I just want to commend the Attorney General for bringing this piece of legislation. The legislation that is before us is seeking to reform the criminal justice system. It is, in my view, legislation that will have far-reaching positive effects for the criminal justice system in our country, and anyone who is concerned about what is going on in our country will welcome this Bill.

May I just say that those on the other side are pretending that this legislation is so new. There is nothing—

Sen. Mark: [*Inaudible*]

[*Mr. Vice-President pounds gavel*]

Sen. Mark: Sorry, sorry, Sir. [*Crosstalk*] What is the relevance?

Sen. Dr. Saith: You making that statement? [*Crosstalk*]

Sen. The Hon. C. Kangaloo: Mr. Vice-President, this legislation that is before this honourable Senate today, is not new to other jurisdictions. The Opposition would have you believe that we have plucked this legislation from out of the air and that we are just presenting it as some sort of easy way to solve the problems that exist in the criminal justice system.

We have heard the Attorney General speak about the fact and Sen. Seetahal, S.C. supported that this legislation exists in Jamaica and has since, I think 1995, if I am not mistaken. I think it was Sen. Seetahal, S.C. who spoke about the effect of having this type of legislation in Jamaica. I think she spoke about the fact that the interference with witnesses, the number of cases where that happened had decreased and we thank Sen. Seetahal, S.C. for that contribution and for pointing those things out to us.

We see that legislation exists in England, so when we see that we wonder how they can be questioning the motives of the Government for bringing the legislation. They always seem to say that everything this Government does is demonized by those on the Opposition Benches; everything. I would hope that those who have heard and those who have looked on are seeing them for what they are. [*Crosstalk*]

Sen. Mark: [*Inaudible*]

Mr. Vice-President: Please.

Sen. The Hon. C. Kangaloo: The Bill seeks to deal with certain problems that are being experienced, witness tampering and the killing of witnesses is unfortunately something that is happening in our criminal system and this Bill is seeking to address those situations.

If I could just point out that at every step of the way if you look at the legislation, you are seeing that there are safeguards and the safeguards you see in section 15C(1) are the different situations that have to be proved to the satisfaction of the court. You are seeing all the safeguards. The safeguards are there and we talked about the fact that the courts will stand as the safeguards. And the amendment that is being proposed by the Attorney General goes even further, where it gives the court the power to refuse to admit the evidence if the value of it will be more prejudicial to the accused.

There is no way that any well-reasoned person can say that this piece of legislation is taking away the rights of any individual or the rights of the accused or the rights of the accused to a fair trial. It is very clear that the safeguards have been put in place in the legislation to protect the rights of the accused.

Mr. Vice-President, I listened to some of the issues being raised and I listened very carefully to what Sen. Mark kept talking about the Judiciary. Sen. Mark and Sen. Dr. Gopeesingh kept saying over and over that no one can get justice in the courts in Trinidad and Tobago.

Sen. Mark: [*Inaudible*]

Sen. Dr. Gopeesingh: [*Inaudible*]

[*Mr. Vice-President pounds gavel*]

Sen. The Hon. C. Kangaloo: Those statements, again, just show the mindset of those in the Opposition, because when one seeks to undermine the Judiciary in the way that the Members of the Opposition are seeking to do it, you wonder what are their reasons, because they are therefore undermining all of the democratic systems that, we are pleased to say, we have in Trinidad and Tobago.

They say that they do not trust the Judiciary. They seem to have trust issues all around; they do not trust the Judiciary; they do not trust the police; they do not trust the Government; they do not even trust themselves and that is what has caused them to land in the position they are in today. Their trust issues have caused them to be where they are today.

Just to show you how they operate, they say that they do not trust the Judiciary, but Sen. Mark gets up and refers to a recent judgment of the Court of Appeal where he selectively pulls out something that they say and he is holding on to it and waving it around, but this is the same Judiciary that they do not trust. So he pulls something out of it because he thinks that is an embarrassment to the hon. Attorney General; it was not, because I remembered when that judgment was delivered by the Court of Appeal, the Attorney General was the first one to commend the decision of the Court of Appeal at the time. You just see how they speak in different tongues; they do not have faith in the judicial system—

Sen. Mark: [*Inaudible*]

Mr. Vice-President: Senator.

[*Mr. Vice-President pounds gavel*]

Sen. Mark: Sorry, Sir.

Sen. The Hon. C. Kangaloo: They do not have faith in the judicial system and at the same time when there is something they feel that they can delight in at the expense of the hon. Attorney General, they get up and start to talk about it in an excited way.

Sen. Mark: Excited? Passionate!

Sen. The Hon. C. Kangaloo: Let me just go back to some of the issues that some of the Members of the Opposition raised and Sen. Mark—

Sen. Mark: Me again?

Sen. The Hon. C. Kangaloo: Yes, Sen. Mark again, because he really tries our patience at times, Mr. Vice-President. You know what was one of the first things he talked about? About the political implications of this Bill in an election year. And you wonder; we bring a Bill that is going to help in the reform of the criminal justice system, to assist in the trials and in getting justice and allowing the wheels of justice to turn properly and he is talking about—

Sen. Mark: Who “he”?

Sen. The Hon. C. Kangaloo: —it has political implications in an election year.

Sen. Mark: Mr. Vice-President, I object! I object! On a point of order. I object to anybody calling me "he"! Call me Sen. Mark! [*Laughter*]

Hon. Senator: That is the pronoun.

Sen. Mark: I object, Sir, to "she" calling me "he". [*Laughter*]

Mr. Vice-President: Please, Sen. Mark. Sen. Kangaloo, will you please refer to him as Sen. Mark.

Sen. The Hon. C. Kangaloo: I did not know if I placed too much emphasis on the "he" but I really was just using it as a pronoun that time. I did not know Sen. Mark was so sensitive. [*Crosstalk*]

Sen. Mark: [*Inaudible*]

Mr. Vice-President: Sen. Mark.

Sen. The Hon. C. Kangaloo: Sen. Mungalsingh also spoke about the political implications of the Bill. He talked about court matters against a former administration in the court, but his tag line was that this was designer legislation and all of his colleagues were happy with that tag line of designer legislation. What I can say is that when one speaks of anything being designer it is for a certain elite group of people.

Sen. Mark: [*Inaudible*]

Mr. Vice-President: Sen. Mark.

[*Mr. Vice-President pounds gavel*]

Sen. Mark: Sorry, sorry, Sir.

Sen. The Hon. C. Kangaloo: This legislation is no designer legislation; this legislation is going to benefit all the citizens of Trinidad and Tobago; that is what it is going to do. [*Desk thumping*] So it is no designer legislation. But that is the Opposition for you; they love to come with their little tag lines and they are happy with one another and they were patting one another on the back when he came up with that phrase.

Sen. Mark: You are jealous of the UNC? It is camaraderie, you know. [*Crosstalk*]

Sen. Sahadeo: Listen to the girl, please. Sit back, listen and enjoy.

Sen. The Hon. C. Kangaloo: I move on to Sen. Ahmed's contribution. She started off by talking about how we have reached a precipice, then she went into a contribution that I did not really understand, but the irony of it struck me. We have reached a precipice, yet they do not see that this legislation is going to take us from that precipice that she is saying we are on. They do not acknowledge; they will not see the good that this legislation can accomplish.

You wonder why Sen. Ahmed gets up and talks about "we have reached a precipice". I would say that it is for all of us in this Parliament, all parliamentarians to join together when we have legislation like this which can effect such drastic changes in our criminal justice system. You wonder why they would not support it. Then, Mr. Vice-President, we come to Sen. Dr. Gopeesingh.

Sen. Dr. Gopeesingh: Or, you could say Tim. [*Laughter*]

Sen. The Hon. C. Kangaloo: Sen. Dr. Gopeesingh started off by declaring so piously that they on that side are strongly committed to fighting the high wave of criminal activity. They are strongly committed to eradicating kidnapping; all of that strong commitment, but they are saying they will not support this Bill. Even if they do not accept what we on the Government side have been saying, having listened to what the Independent Senators have said, one would think they would think about changing their minds, if they are so committed to fighting the high wave of criminal activity.

Mr. Vice-President, there is nothing more for me to say just to end by saying, Sen. Dr. Gopeesingh said the population are not ostriches, the population will know. I do not know what the population will know. There is a saying that he who is asleep and knows not he is asleep, he is a fool; shun him. And that is exactly what the electorate will be doing with the UNC in the next general election. They will be shunning them, because their reaction to what the Government has responsibly brought to this Parliament today just shows them up for what they are. They are only about theirselves; they are not about the betterment of this country.

Mr. Vice-President, I support the Bill and I thank you.

Sen. Mark: Very good, very good, Christine.

Sen. Dr. Jennifer Kernahan: Thank you, Mr. Vice-President, for allowing me the opportunity to contribute on this Bill to amend the Evidence Act, Chap. 7:02.

We sat here and listened to Sen. Kangaloo pontificating about the safeguards of the courts and the fact that we in the UNC do not trust the courts; we do not trust the Judiciary, the system and so on. I do not know if Sen. Kangaloo believes that we are all blind, dumb and deaf, because it was in this very Parliament that the Prime Minister came—and it is in the *Hansard*—and said he had called the Chief Justice of this country to resign or be charged. [*Desk thumping*] It is in the *Hansard*. So I do not know what about that statement would give us all this

confidence in the courts and Judiciary after that because judges are not stupid. If you see a Chief Justice pulled down to his knees, brought to the brink of bankruptcy, what do you think is going on in the minds of these judges?

Sen. Jeremie S.C.: Mr. Vice-President, on a point of order. This is a matter which is engaging the attention—

Sen. Mark: No, man, he said that statement here.

Sen. Jeremie S.C.: She is going on to extrapolate from the *Hansard* to speak about what the Prime Minister is doing—

Sen. Mark: You cannot anticipate—

Sen. Jeremie S.C.: She started it.

Mr. Vice-President: Sen. Mark.

Sen. Jeremie S.C.: This is a matter which is before the courts of the land in three separate proceedings and I think that we ought not to go so far.

Sen. Mark: You are a witness, you are to go to court. The first Attorney General going to court and Prime Minister.

Sen. Jeremie, S.C.: Not the first.

Sen. Mark: You!

Mr. Vice-President: Sen. Dr. Kernahan, I have to uphold the Attorney General's objection. The matter you know only too well is before the court and you should not refer to it.

Sen. Mark: You shame the country!

Sen. Dr. J. Kernahan: Minister Kangaloo spoke about the fact that my colleague, Sen. Ahmed spoke about a precipice and she wonders why we do not support this legislation, which is supposed to save us from this precipice. We are not stupid, we are holding on to the rope that will stop us from going over this precipice, which is the Constitution of this country. [*Desk thumping*] And we are going to hold on to that rope and we will not go over the precipice with the PNM administration, which is going to go over this precipice in 2007 or whenever they call the general election. We are going to hold on to our rope; we are going to hold on to our Constitution and we are going to be all right. The people of this country are going to be all right; do not worry about us.

8.00 p.m.

Mr. Vice-President, I just want to congratulate my colleagues on this side; Sen. Mark, Sen. Dr. Gopeesingh, Sen. Ahmed and Sen. Mungalsingh because of their spirited and uncompromising defence of the constitutional rights of the people of this country in the face of this unrelenting and ferocious attack on the constitutional integrity of this country by this Government. [*Laughter*] [*Desk thumping*]

Mr. Vice-President, it is quite clear to us that under the pretext of fighting crime and fighting the criminal element which they have assiduously encouraged, promoted and financed over the past five years—they call them community leaders—and wine and dine them in Crowne Plaza, Balisier House and all over the place, [*Desk thumping*] make promises of land, quarries and all kinds of things; they promoted them. What do you think was going to happen in this country eventually, Mr. Vice-President, when you promote gang leaders as community leaders and let them loose on the unsuspecting population? Now you want to come and tell us about we are going over a precipice and why we do not hold on to this piece of legislation that you have here. This legislation is a red herring and I am going to go into that a little later on.

Sen. Joseph: Later on.

Sen. Mark: Yes, yes we have a long time here, man. [*Crosstalk*]

Sen. Dr. J. Kernahan: Mr. Vice-President, this administration clearly, this afternoon, is using this Parliament to bring a piece of legislation which would go against the very grain of our fundamental rights and freedoms.

Sen. Mark: Do not disturb, good.

Sen. Dr. J. Kernahan: Mr. Vice-President, the Attorney General this afternoon in his presentation made a very glib sort of analysis of the situation purporting to show that, and I quote: The interest of the society and the rights of victims will be served by this legislation. And he quoted Lord Bingham but I would like to remind the Attorney General that Lord Bingham's remarks and observations were made in the context of a presumption that a society and its political directorate had proper respect for law and order; that you would have had a functioning criminal justice system; that the separation of powers between the Legislature, the Judiciary and the Executive was very clear; that you would have had proper respect for the supremacy of Parliament and that you would have had proper checks and balances on the Executive.

Mr. Vice-President, right now we are in a situation where the Special Joint Select Committees of Parliament which was set up in the Constitution to oversee the functioning of the Executive are under threat of being closed down using a majority sort of rule, carrying up the quorum to seven because the Executive does not want to be scrutinized. And you are quoting Lord Bingham under these circumstances where every possible tenet of the Westminster system is being violated by this Government? They ought to be ashamed! They are very cynical people. Mr. Vice-President, every single independent institution in this country has been under attack and the forces of law and order are not in control and the criminals know that they will not be put in jail or put behind bars because there is no detection. Why are you quoting Lord Bingham? He was talking in a different context, in a society where all these things are basic and fundamental to the functioning of the society.

Mr. Vice-President, none of the above that I have quoted—

Sen. Mark: She is quoting Lord Bingham.

Sen. Dr. Gopeesingh: She is referring to the Attorney General's statement. [*Crosstalk*]

Sen. Dr. J. Kernahan: None of these basic tenets—[*Interruption*]

Mr. Vice-President: Please, could you give the Senator the opportunity to speak, we will get the—

Sen. Dr. J. Kernahan:—of civilized society, of democratic society and of constitutional society applies now in our country and that is why my colleague, Sen. Ahmed said that we are on a precipice and it is a very true statement. It is a very fair statement and we all know that. Because when we have reached the point when elderly citizens of this country in the winter of their years are relaxing and playing with their grandchildren can be brutally and savagely beaten to death, Mr. Vice-President, what else are we on but on a precipice? What else? And you are going to stand up there and defend that? You should stand up here and cry tears; apologize to the people of this country for the abyss and the turmoil that you have brought on them in these five short years. [*Desk thumping*]

Mr. Vice-President, Sen. Prof. Deosaran did it better than any one of us here; he described what is happening in this country; he described what is happening to the criminal justice system, and it is not anything new. [*Interruption*] Over the last couple of years we have sat in this Senate and we have spoken in this Senate; time and time again we warned this Government what was going to happen long before

it happened. We said to them that eventually with all the guns on the streets and with the criminals running loose; the criminals in charge of the prisons and so on, that judges, magistrates and policemen are going to be on the frontline and they are going to be at risk. We said it here over a year ago, long before it even started to happen and it was coming out. So this is nothing new to us. We understand what is happening in this country and we are going to turn it around; when we come back in office [*Desk thumping*] in 2010; and we are not going to turn it around by taking away people's fundamental constitutional rights. We are going to do it in collaboration with the people, with the institution of talk back. You heard about that institution, Mr. Vice-President? Talk back. We are going to talk with the people and they are going to talk back to us and together with the people of this country we are going to find solutions for the problems that we hear. [*Desk thumping*]

Sen. Mark: Talk back. [*Crosstalk*]

Sen. Dr. J. Kernahan: Mr. Vice-President, the Attorney General promoted—[*Inaudible*]

Sen. Mark: That is out of the retreat.

Sen. Dr. J. Kernahan:—as one which would improve the criminal justice, implying that its target would be the murderers and kidnappers. [*Interruption*] You want to say that the target of this Bill is murderers and kidnappers, the question then arises, why then is the Evidence Act before us? Why are you amending the Evidence Act to allow the Attorney General, a political appointee, to introduce evidence which shall be admissible in criminal procedures as stated in section 15B? Section 15B says:

> "In any criminal proceedings, evidence of criminal conduct which may be contained in a document may be admissible in evidence if the document—
>
> (a) is the best or only evidence of that conduct which is alleged by the prosecution; and
>
> (b) is obtained by or under the hand of the Attorney General in any matter related to mutual legal co-operation pursuant to the Mutual Assistance in Criminal Matters Act, 1997."

So, Mr. Vice-President, that is where the fig leaf of pursuing criminals on behalf of the Attorney General and so on, falls to the ground and the emperor is seen naked and really in full pursuit of political opponents. This is where it comes. And I want to warn people in this country; people who want to hide their

heads in the sand like ostriches and refuse to see what is happening under their very noses, the day will come when they will remember these Tuesday afternoons when we were able to come here and stand and defend the people's rights. [*Interruption*] They will remember that it would be no longer possible if they do not stand and defend our rights now and they will only understand what is happening when the boots are at their door at midnight and there will be no Wade Mark around and no Sen. Dr. Gopeesingh around, nobody to talk, Mr. Vice-President, and they will disappear off the political landscape. [*Interruption*]

Mr. Vice-President, that is not a joke; it happened in Haiti, it happened in Guyana and it happened in Grenada. [*Interruption*] It is a Caribbean phenomenon. It has been a Caribbean phenomenon and it is happening here under our very noses, and we have to wake up and smell the coffee and stop pontificating [*Interruption*] and stop apologizing for the fascism that we see passing as democracy. [*Desk thumping*]

In section 15B the Attorney General insidiously inserts his office as a forum for prosecution and persecution because this Mutual Assistance in Criminal Matters Act, 1997; we have this Act on the book and it makes provisions actually—

> "An Act to make provision with respect to the Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Trinidad and Tobago and to make provision concerning mutual assistance in criminal matters between Trinidad and Tobago and countries other than Commonwealth countries."

Fair enough, Mr. Vice-President. We are saying what does this Act have to do with the Evidence Act? Why is the Attorney General insidiously intruding his powers and the Mutual Assistance in Criminal Matters Act into the Evidence Act? Because they are two completely different areas and they have different objectives. As I will show, this Mutual Assistance in Criminal Matters Act has some very serious safeguards and conditionalities upon which you can accept or ask for assistance in criminal matters. In this Act, people are saying it is so far-fetched that we are talking about political interference in this question of 15B, but in this very Act it is acknowledged that political interference is possible in criminal procedures and under the section which deals with other Commonwealth territories asking us for assistance it says here in section 22(1):

> "Subject to this section, a request for assistance under this Act duly made by a Commonwealth country shall be accepted."

And it says under section 22(2):

"Such a request shall be refused if, in the opinion of the Central Authority—"

Which is the Attorney General—

"(a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;"

So the Central Authority is saying here that we will not accede to requests for assistance in any case, Mr. Vice-President, if in their view the offence is of a political character. It goes on to say that it shall be refused if:

"there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;"

And in (c) it says that it shall be refused if:

"there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;"

So it is clear, this Act says that they are not going to accede to any request that would indicate to them that there is political prosecution. This shows that it is possible that people in their countries are prosecuted under the guise of criminal prosecution for political purposes. The Attorney General admitted this in this Bill. So why is everybody so horrified and so upset that we should make the suggestion, the fact that the Central Authority is insinuating itself into this criminal procedure in the Evidence Act? We are saying that this—and I agree with my senatorial colleague—means that the criminal procedure, as outlined in the Evidence Act is being politicized. Once you have the Central Authority, which is a political appointee, with certain circumscribed provisions in the Mutual Assistance in Criminal Matters Act being inserted into the Evidence Act, it politicizes the Act.

If you look at the First Schedule [*Interruption*] the mainstay of this Bill is the fact that the Attorney General under the Mutual Assistance in Criminal Matters Act has inserted himself as the Central Authority in the Evidence Act, so we have to look at why and I am analyzing, why has he done that, when this Act has certain special—

Sen. Jeremie, S.C.: Excuse me, just on a point of clarification, I have not inserted myself as the Central Authority, I am the Central Authority. [*Interruption*] It is a matter of law. [*Interruption*] If you check—

Sen. Dr. J. Kernahan: Yes, I am not disputing that, I am saying he has inserted himself as the Central Authority into the Evidence Act and I want to know why. Because this has very special provisions for a very special reason—

Sen. Jeremie, S.C.: So what do you do with the material you get?

Sen. Dr. J. Kernahan:—the mutual assistance between Trinidad and Tobago and Commonwealth countries, it was never meant for this internal sort of arrangement in our internal criminal proceedings and I am saying that he is politicizing the internal criminal proceedings. This Mutual Assistance in Criminal Matters Act is very clear. In the First Schedule it says very clearly the conditions under which evidence of persons or things can be sought in a foreign country. It says here:

> "a request for assistance under this Act made by a Commonwealth country shall
>
> (a) Specify the assistance requested;
>
> (b) be initiated by a judge, a magistrate, the Director of Public Prosecutions or a law enforcement agency;
>
> (c) identify the person, agency or authority that initiated the request;
>
> (d) state any wishes of the country concerning the confidentially of the request and the reasons for those wishes;"

Mr. Vice-President, it takes that sort of action that is envisaged in this Bill very seriously. So how can you do that? You take all the safeguards, have all these safeguards in the schedule and in the body of the Bill to safeguard against political prosecution; you take all that and you have it in a separate Act for very specific purposes and take it now and slip it in domestic legislation into the Evidence Act which negates everything that the Act was trying to accomplish—

Sen. Mark: What is the purpose of that?

Sen. Dr. J. Kernahan:—to isolate people from political prosecution, Mr. Vice-President. This is what you are doing. You are taking the Mutual Assistance in Criminal Matters Act and using it for politicizing the criminal justice system. Who refuses to see that is truly blind and they are not going to see it until it comes up against them and then they are going to realize, oh this is what was happening.

So that is the major problem we have with this Bill, it is the sneaky way in which the Central Authority is given powers to assist other Commonwealth countries and so on—the Mutual Assistance in Criminal Matters Act is sneaking into domestic legislation.

Mr. Vice-President, I want to deal now with the question of the admissibility of statements in documentary form which is another serious problem that we on this side have with this Bill. I looked at the Evidence Act, 1971 of Australia and I would say that the Attorney General in this Bill before us has given us only half the story. There are a lot of other—

Sen. Mark: Give us half of the story.

Sen. Dr. J. Kernahan: Yes, he gave us half of the story because there are so many other safeguards that you need to have in place in order to ensure that your constitutional rights are not infringed when you look at the whole question of hearsay evidence and documentary evidence and so on. The Attorney General brought a few of them and put them on the Table, but when you go and do the research you realize that we are exposed, because half of these safeguards are missing from this Bill before us.

Mr. Vice-President, we are talking about 2020 and therefore we must look at the highest and the best examples of advanced democracies that we can. We cannot look at the most backward examples and we cannot hold on to the Attorney General's tailcoats following him down a path to banana republic status. We will not do that here. We are going forward as an alternative Government who will be in power in the next year or so, and we will look at the highest levels of parliamentary democracy and legislative democracy. We are not going to follow this Attorney General down the path to banana republic statehood.

So, Mr. Vice-President, when I look at the admissibility of statements in documentary evidence—maker of document called as a witness—I am looking here at 15C and it has certain conditions:

> "(1) Subject to subsection (2), a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person—
>
> (a) is deceased;
>
> (b) is unfit…;

(c) is outside of Trinidad and Tobago…;

(d) cannot be found…"

Mr. Vice-President, that is half the story. The other half says here that if direct oral evidence of a fact or of an opinion would be admissible in a proceeding, a statement made by a person in a document tending to establish the fact or expressing the opinion is subject to this part admissible as evidence of the fact of the opinion if—

And they go on to give us certain other conditions that we have not seen here for a statement tending to establish a fact, the maker of the statement must have personal knowledge of the matters dealt with by the statement or for an opinion, the person expressing the opinion is qualified to give evidence of that opinion.

And that is a serious thing, Mr. Vice-President, because this document and these statements that we are going to be having admitted as hearsay evidence in court and so on, these are serious safeguards to ensure that justice will not only be done but be seen to be done. That is a serious point. Another safeguard that the maker of the statement is called as a witness in the proceeding.

I have seen here in section 15D where the Attorney General purports to bring a statement where the person is not even called as a witness and I have not seen that anywhere in any other comparative legislation. So that one is totally made up, because all of these safeguards are meant to be applicable where the person can come as a witness or if they do not come as a witness it is because of reasons of death, under threat, fear of bodily harm and things like that. I have not seen anything in any other legislation where you can tender a document purportedly from a person who is not even called as a witness. [*Interruption*]

So, Mr. Vice-President, the second condition is that the maker of the statement is called as a witness in the proceeding, and if he is not called as a witness there are very good exceptions to that. The third safeguard is that the court is satisfied that the statement was made at the time when the facts stated in the documents were fresh in the memory of the witness and for a statement expressing an opinion, the facts on which the opinion was based were fresh in the mind of the person expressing the opinion.

Where are these safeguards in this banana republic legislation we have before us, Mr. Vice-President? There are no safeguards, so these people would bring some document by somebody who is not even a witness and he will purport to give an opinion or to give a statement without the relevant safeguards as is applied in the highest levels of legislation that are available.

Mr. Vice-President, these are some serious concerns and there are other safeguards which we feel should be part of this legislation and we are not seeing them. It says on the documentary evidence of opinions, it says if direct oral evidence of an opinion would be admissible in a proceeding an opinion expressed in a document made by a person expressing the opinion or by another person under the first person's direction is subject to this part admissible as evidence of the opinion if the person expressing the opinion would if called as a witness in the proceeding have been qualified to give evidence and the court—Mr. Vice-President, very important—is satisfied in terms of the form of the context of the document and the circumstances in which the document expressing the opinion was made. All these things have been elaborated by other persons.

Mr. Vice-President, I would like to refer you to documentary evidence, criminal proceedings which I found very interesting in this piece of legislation. It says here nothing in this part renders admissible as evidence in a criminal proceeding a statement in a document made at the time when that proceeding was pending or at a time when it might reasonably have been contemplated that criminal proceedings would be instituted.

Mr. Vice-President, you hear what they are saying here? In documentary criminal proceedings you cannot tender a document, you cannot tender a statement if that document or statement was made when the proceedings were already pending or when it might have been reasonably contemplated that criminal proceedings would be instituted. When we have a document, according to this Bill before us here, like under section 15D where these documents are introduced, how would we know what safeguards the defence has here, that this important pre-requisite was not violated? How would we know? How would we know when this statement was made, that the person made it knowing that criminal proceedings were being instituted or about to be instituted?

These are important safeguards for democracy, for constitutional rights, for our Constitution, and when you have these hodgepodge pieces of legislation coming to Parliament with clearly, political aims, none of the safeguards in the most advanced pieces of legislation protecting documentary evidence and stating the criteria for documentary evidence is being even taken on board. It is not being taken on board. And we are very concerned that that augurs very badly for the criminal justice system, which is already in shambles, which is already under a lot of pressure and you are going to bring this; you are adding gasoline to this fire. You are not doing anything that will augur well, that will promote the rights and freedoms of the people of this country.

Mr. Vice-President, I do not accept that we have to go to these lengths to protect ourselves from the criminal elements. I think that we can protect ourselves from the criminal elements if we do not promote them as community leaders, if we do not finance them with CEPEP and with URP gangs; if we do not give them money and if we do not promote them. [*Desk thumping*] It is simple. So, why are you promoting these people on one hand and then bringing all this fascist legislation on the other hand? Who are you trying to fool? You are not fooling anybody! We are very clear in our minds that this is political legislation; it has nothing to do with criminal gangs; it has nothing to do with gunmen and so on, because you know what to do about that. [*Desk thumping*] You know who they are. You have identified them. You know where they are and you can deal with that, if you want to! But you are using this cover, this blanket of crime and all this turmoil to take away our democratic rights and liberties. That is what you are doing!

At the end of the day when we wake up, Mr. Vice-President, we will be over the precipice. We would have given up our rope, given up our Constitution, given up our rights, and we would be left to the mercies of people who are pillaging and plundering this country, and that is what is happening. So you are not fooling anybody. I am telling the Attorney General, right here and right now that he is not fooling anybody. I am warning people who would come to this Senate; who stand up in public domain. This morning I was looking at CNC3 and there is this gentleman, I did not get his name because I tuned in late, who was openly backing the police in the brutality of the executions that we have been seeing in this country of young men all over the place being practically executed by the police. That is not the way to deal with crime!

Sen. Joseph: Mr. Vice-President, on a point of order. How could the goodly Senator stand in this Senate and accuse the police of executing people?

Sen. Dr. J. Kernahan: Mr. Vice-President—

Sen. Yuille-Williams: Sit down; sit down!

Mr. Vice-President: Sen. Dr. Kernahan, I have to support the objection raised by the Minister of National Security you are fast becoming reckless. As you develop momentum you are becoming reckless. Please do not ascribe that kind of attribute to the police.

Sen. Dr. J. Kernahan: Mr. Vice-President, I have read editorials in this country that are very concerned about the manner in which the police are going about dealing with the criminal element. [*Interruption*] And we are saying that we are concerned because today it is those young boys and tomorrow it could be me.

We are saying that there are ways, Mr. Vice-President, if the police are well trained and are able to do their job.

Sen. Dumas: Point of order, Mr. Vice-President.

Sen. Dr. J. Kernahan: There are ways to execute their duties and defend themselves without all the carnage that we are seeing, we are very concerned. [*Interruption*] And if we do not stand and talk out now, I am saying that later on it will be too late.

Sen. Dumas: Point of order, Mr. Vice-President. [*Crosstalk*]

8.30 p.m.

Mr. Vice-President: Sen. Dr. Kernahan, are you saying to me that what I just advised you not to do you are defending it and saying that it is right? Are you saying to me that you are believing the editorials and everything that the media might say and, therefore, that gives you the right to say that the police will, in fact, execute citizens? Are you saying that to me? I am advising you not to ascribe that kind of thing to the police. It is not what we should, as responsible people, be doing.

Sen. Dr. J. Kernahan: Mr. Vice-President, all I was doing was expressing my concern.

Sen. Dumas: You are supposed to withdraw that statement, Kernahan, and you know that! [*Crosstalk*]

Mr. Vice-President: Sen. Dr. Kernahan, I would prefer that if you just go on and do not revisit that statement.

Sen. Dr. J. Kernahan: Mr. Vice-President, my point is, we are looking at this legislation in the context of what is happening in the society: the violence, the unrest, the senseless killings of young men and gang warfare, revenge killings; all the things that are happening in the society and we are saying that this legislation is not the solution to that problem. I am saying that this Government has in its hands the proper means and methods of dealing with what is happening. We are saying that this legislation is aimed at the political opponents of the Government, because we are saying that the Central Authority has no business in inserting their provisions of the Mutual Assistance in Criminal Matters Act into the Evidence Act. The Evidence Act can be amended; it can be brought to bear in some measure on what is happening without the input of the Central Authority, which is a political appointment.

We are saying the fact that it has been inserted in the Evidence Act means that criminal processes in this country are being politicized. We are very concerned. We are asking the national community to sit up and take note of what is happening; not to give up their fundamental rights and freedoms; not to give up their constitutional rights under the guise of the fighting of crime, because it is non-productive in the long run. You will find yourself helpless in an autocratic, dictatorial, fascist administration which has no respect for the rights and freedoms of any of the citizens of this country: bandit, police or thief. This is our concern and I am begging the national community to take this very seriously and to look at it in the long run because our children's lives and future are at stake.

I thank you. [*Desk thumping*]

Sen. Mary King: Thank you, Mr. Vice-President. Sorry, Attorney General, I will not be very long. But I do agree with my colleague who just spoke, Sen. Dr. Jennifer Kernahan, that we have to look at our society; we have to look at the unrest, the crime, the lack of hearsay evidence in criminal systems and I think we have to congratulate the Government for bringing this Bill because it is now maybe another step in the direction of trying to bring about some kind of calm and peace to our nation. We have too many criminals getting away.

The purpose of this Bill is to amend the Evidence Act to allow the State to admit into evidence hearsay evidence in documentary form in any criminal proceedings, including a preliminary enquiry. I am saying that specifically because this is what this is telling us this Bill is about, but when we look at the very first proposed amendment, section 2, we are not seeing any mention of hearsay evidence, where we are allowing the Attorney General in any criminal proceedings, evidence which may be contained in a document accrued by you under the Mutual Assistance in Criminal Matters Act. And we know under the Mutual Assistance in Criminal Matters Act you are the Central Authority and you are the person mentioned as the person that must be the one involved.

So I would like to see us either delete that clause or include in it that we are only talking about hearsay evidence. It is not mentioned. If there is something wrong with that, I would think we need an explanation.

Sen. Jeremie, S.C.: Can I give an explanation?

Sen. M. King: Of course.

Sen. Jeremie S.C.: When Sen. Seetahal, S.C. was making her contribution earlier on she said that hearsay evidence really is not what we commonly describe as hearsay evidence.

Sen. M. King: We are past that.

Sen. Jeremie, S.C.: Okay. So that if a statement is made—and this is how the Central Authority works; it was established by Act of Parliament in 1997. Now what happens is that the Attorney General under the Act—it came out of a meeting of law ministers, not Directors of Public Prosecutions, but law ministers in Harare; and they established a scheme because they recognized that there was a need, not only to investigate crime wherever and whenever you found it—which is the task of Interpol, a national security—but there was also a need to collect forensic evidence. It was in that context that the law ministers present felt that they should create this new institution. That is how the mutual assistance scheme and the central authorities came about.

The documents which are produced in the process of mutual legal assistance are all documents which are properly executed in the country of origin and they go under the Act. There is an intricate procedure.

[MADAM PRESIDENT *in the Chair*]

I meant to touch on this in the wind up to the debate because I recognize that there is a great deal of suspicion coming from the Front Bench with respect to this matter. We had a particularly bad experience as a nation, in that we had, as a small country—we are pioneers in this scheme. We had, as a small country, a case made to the United Kingdom authorities in respect of a particular gentleman who had a flat in London and a bank account of TT $10 million. So we were pioneers in this scheme—

Sen. Dr. Gopeesingh: Madam President, I stand on a point of order. The Attorney General is casting improper motives on Mr. Panday. He is speaking about Mr. Panday when he speaks about a particular gentleman with a flat in London and $10 million. [*Interruption*]

Madam President: Please, both of you cannot stand.

Sen. Dr. Gopeesingh: This is being spoken time and time again and it is wrong; we do not condone it; it must be corrected and we cannot allow the hon. Attorney General to make those statements. I ask for his withdrawal of that statement. And the matter is before the Appeal Court, Madam President!

Sen. Jeremie, S.C.: Madam President, I made no reference to a particular name. The gentleman in question is no longer a Member of the House and he is not protected by the Standing Orders of the House.

Sen. Dr. Gopeesingh: No, but the matter is before the courts!

Sen. Mark: Madam President, the matter is before the courts!

Sen. Dr. Gopeesingh: We cannot sit down and allow him to—

Madam President: Please, everybody sit down. [*Crosstalk*] I just came into the House; I was not even listening to the Attorney General so I am not too sure what you were saying but—[*Crosstalk*]—if the matter is before the court, Mr. Attorney General—

Sen. Jeremie, S.C.: I know the Standing Orders.

Madam President: I know that, so, therefore, please do not refer to it then. [*Crosstalk*]

Sen. Jeremie, S.C.: We were pioneers in this scheme. What we did as a small country, both with respect to the United States of America and with respect to the United Kingdom, we made an application to the UK authorities under the Mutual Assistance in Criminal Matters Act and we said: "Can we get information on X and Y?" And the subject went to the foreign office and said: "No, this is a political matter so that you should not investigate it." The foreign office conducted its own investigation, as is required under the scheme, because the scheme provides for political persecution. It says that mutual legal assistance is only permissible when it is defence of criminal prosecutions. The British authorities at the foreign office satisfied themselves that there was a proper criminal case in Trinidad to be answered.

So the matter went on and they gave us all the assistance which we required.

Madam President: Mr. Attorney General, you are making a contribution—

Sen. Jeremie, S.C.: I am answering the question. But what happens is that the metropolitan police in the form of the Scotland Yard, would carry each and every person who is involved in this matter or any of these matters, whether it is the firm of accountants which might have registered the flat or whoever—[*Crosstalk*]

Madam President: Mr. Attorney General, it is kind of long, even for answering a question while a Member is making a contribution, so I think you need to wind up.

Sen. Jeremie, S.C.: I will be very brief. All of these things go from the police authorities. It dovetails on the Interpol system.

Sen. Dr. Gopeesingh: Why you "doh" talk about your—

Sen. Jeremie, S.C.: So the police authorities carry the person down to the—[*Crosstalk*]

Madam President: Senator, I warn you! I warn you, Senator!

Sen. Jeremie, S.C.:—Bow Street Magistrates' Court; a document is prepared and a dossier comes to the Central Authority. It is sealed and it is stamped by the Magistrates' Court. But the point is that because it is in a foreign jurisdiction it is hearsay evidence for our purposes. It is fine evidence if you were in London, but it is hearsay evidence for our purposes. So that in our jurisdiction, unless you bring that person here to speak to the document and say: "Yes, that is my signature; I was the manager of X bank", then it is hearsay evidence.

Madam President: You are not getting injury time.

Sen. M. King: I do not need any time; I was going to be very short. That was actually the point I was making, Mr. Attorney General, in that—through you, Madam President—in your section 15B, let us insert the word "hearsay", because you have all those powers already under the Mutual Assistance In Criminal Matters Act. You have all the powers you just talked about because it has been done. Therefore, I am suggesting, we would not have had the furore had we put into our clause 1 the fact that we are talking here, "hearsay" evidence.

The other point I wanted to make is that the new amendment which has come before us, 15E, is very broad. It talks about any criminal proceedings or preliminary enquiry, the court may exclude evidence. I think here, again, if we are talking about hearsay evidence, let us put it in so that it would not be so broad; it will be very specific.

So I would like to have those—

Sen. Jeremie, S.C.: At the committee stage I will take—

Sen. M. King: And perhaps that will bring us focus as to what it is that we are trying to do.

You mentioned in the beginning of your presentation that there were other pieces of associated legislation which will enable us to have a better working justice system and be able to have possibly criminals brought to trial more effectively, and you mentioned the DNA, the Breathalyzer, the Criminal Offences Bill, the Indictable Offences was going to be strengthened, but I think we need to also include here, the Whistle Blower Protection Bill, which has never come before this Parliament and which is very critical for protection of whistle blowers.

I am sure you have heard of the Whistle Blower Protection Act that is incorporated in most countries which have also brought anti-corruption legislation.

We have also signed the UN Convention and the OAS Convention against corruption and I think that if you are going to really bring a holistic set of bills to become Acts very soon, that these are things which should be included in that legislation. And you cannot say that there is not the possibility of a link between cases being dismissed, witnesses not appearing and some queer judgments; you cannot say, categorically, that there is no bribery and corruption involved.

So I think we really need to bring before this House the Anti-corruption Bill, the Whistle Blower Protection Bill and we need to strengthen the Witness Protection Act. It is not working. So I would like those three Bills to come back before us.

Thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. John Jeremie, S.C.): Madam President, it has been a very long evening and I must congratulate the Independent Bench, in particular, who I think have demonstrated true national service this afternoon and an understanding of the legislation and an understanding of where we are as a nation. I heard a word "precipice" mentioned, but I prefer to think that we are at a point of great peril but also great opportunity, because I am a fighter and, like Sen. Mark, my children are going to go to school here; they are going to live in this country and this is my home. So that I am about making Trinidad and Tobago a better place for, not simply me, but my children and their children after them. So in a real sense, I think of my mission of Attorney General as being part of building a civilization.

It is not going to be a silver bullet piece of legislation but this legislation carries us some way towards addressing the difficulty that we have now which was highlighted recently by the High Court and the Director of Public Prosecutions in relation to the difficulties being experienced in the criminal justice system. The Government alone cannot do this. It has to be the Government; it has to be social sector groups, NGOs; it has to be academics and it has to be each and every citizen in Trinidad and Tobago deciding that: "I will not be afraid. This is my country; I will fight for it." We have never had a war. This is a war. I think that is the way that the problem would be solved.

Let me just go back to the Bill. I endorse completely the points made by Senators Kangaloo and Seetahal, S.C. They touched precisely on the key areas in the Bill. I kept asking myself why, every time we try to bring legislation which is

going to benefit the people of Trinidad and Tobago, which is going to do something in terms of addressing the crime problem, there is resistance. We should all be together on that because we all have to live in this country.

The Police Service Bills were delayed by a year; the DNA Bill is in committee; the Breathalyzer Bill is in committee; this Bill here, there was an interest to put it in committee. There is no need for this. We cannot wait on this. I gave four concrete examples, one involving an incident which took place between the last time this Senate met last week Tuesday, and today, which involved that shoot-out in Chaguanas where all those guys were killed. Those guys were freed on a murder charge in respect of which they ought, really—had this legislation been in place—to have been inside the prison. But that is a different question.

I have to go back to Sen. Mark, although my colleague, Sen. Kangaloo, dealt with the point at length. I do not think it really deserves mention. Sen. Mark really tries my patience sometimes. He is my friend but he tries my patience sometimes. The short point is that in 1997—we cannot doubt it—there was a Central Authority established under the mutual legal assistance arrangements. Sen. Kangaloo read the *Hansard* as to why the Attorney General of the day felt the Central Authority needed some distinction from the Director of Public Prosecutions. That distinction is maintained in the vast number of territories which have a central authority. If there are 15, it is mentioned in 12 of them.

The judgment of the Court of Appeal which I welcomed as being consistent with what we understand to be the relationship between the Director of Public Prosecutions and the Attorney General, has done absolutely nothing to the working relationship between the offices of the Director of Public Prosecutions and the office of the Attorney General. As a matter of fact, the Front Bench here, when it suits them, would jump up and say the Director of Public Prosecutions is a PNM party hack; that he is doing PNM business; that the Integrity Commission is this. I have had to rise on several occasions to protect the—and the Senators on the Back Bench will know; they will remember that I have had to rise on a number of occasions to protect the Director of Public Prosecutions, to protect the Chairman of the Integrity Commission in here under the Standing Orders.

The short point is that there is a tension between sections 76 and 90 of the Constitution in terms of what the powers of the Attorney General are and what the powers of the Director of Public Prosecutions are. That point has not been conclusively settled. Even the Court of Appeal in that judgment, which I gave you

a copy of, recognizes that: "Look, we have not touched on all the areas and in the event that there is a difficulty at some point in time we remain open to tell the parties what their respective roles and responsibilities are."

In the United Kingdom I heard Tony Blair two or three days ago talking about a dispute between his Attorney—as they call the Attorney General—and the Crown Prosecution Service in relation to the fees for peerages scandal. So there are difficulties in terms of these relationships. But the point is that we work together towards a common goal. That is how it has always been. Whatever difficulties we have had, they have never manifested themselves in the ugly spectre of litigation. That happened under their reign and they make bold to stand today and talk about the relationship between the Attorney General and the Director of Public Prosecutions, after they carried the DPP to court in San Fernando over the Dhanraj Singh matter and pardoned; and then they talk about letters passing between me and the DPP. If these letters exist, that is where it ends, at a level of discourse.

Sen. Mark: We have it already.

Sen. The Hon. J. Jeremie, S.C.: I could make copies for you. I have nothing to hide. My public life is an open book.

The short point that I make is that, one, this difficulty between the Director and myself is only imagined and not real. The Director helped me with my speaking notes today. Up to last night he was helping me with the illustrations. He might have spoken to Sen. Seetahal, S.C. about, whatever. I cannot see that that is illegal, because Sen. Seetahal, S.C. has a working relationship with the Director of Public Prosecutions, as do I. The point is, what the Court of Appeal was saying is that the Director of Public Prosecutions is not to be influenced in his decision to prosecute by any person and that is understood by all, including this Attorney General. It might not have been understood by their Attorney General, but it is understood by this Attorney General.

So what you see in this legislation here is an attempt, first of all, to treat with the difficult problems that we have in relation to violent crime and witness intimidation. That also spills out into the international arena where we have that precise problem. I would leave the offices of Charles Russell, our London Solicitors, one day, and they would receive a call the following week telling them do not get involved in such and such a matter. The tentacles of criminals in Trinidad and Tobago reach far and wide. So the point is that witnesses from the United Kingdom are terrified to come to Trinidad to give evidence, and attorneys,

knowing that, seek to frustrate the court matters by delays, adjournments and so on. So when they think they are coming for a court date on Monday, the matter is suddenly adjourned for a month and they have to then come back in a month's time. We have had problems in terms of some of them saying: "I am not coming back to Trinidad."

I think that a lot of the heat that was coming from the Front Bench is some misconception that I am trying to speak to issues past. I have dealt with that already and we have moved on. I am passing law for all time. You say you might be in government in a year's time? Well, this is good law so that it will help you. [*Interruption*] Set up your business. When you come here you could say what you want over there. You would be one of the few countries which will not have an interface; you will have the DPP talking to the Minister of State in the United Kingdom and the Attorney General in the United States who is the central authority for the United States. It is quite ridiculous if you really know how the system works, because the Attorney General in the United States is the central authority for the United States. How on earth could you get the DPP to talk to the Attorney General in the United States? It is ridiculous! It is a proposition that only has to be repeated to fall on itself.

So I think that all the points have been dealt with before. The protection of rights is adequately dealt with in the Grant case which I went through at length and I do not think that I need to carry Senators at this late hour back through the case, except to say that the courts are consistent with the old common law rules; they are now sensitive to the fact that with these new statutory powers, that they have a duty to weigh the probative value of the evidence against its prejudicial effect.

So yes, it is a new world. We face new perils and they are creating new exceptions to the hearsay rule to deal with those perils, but at the same time they are respecting the rights and freedoms of individuals and the Government is moving on. We will not be deterred; we will move on; we will do our job until the people say that we are no longer supposed to do this job, because we serve the people. We are doing our job and our job is to seek to reduce the unacceptable level of crime in this country and that is what I am seeking to do. With those few words, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

9.00 p.m.

Madam Chairman: An amendment circulated by the Attorney General would replace the one that was circulated earlier. We would come to it soon.

Clause 1 ordered to stand part of the Bill.

Sen. Mark: Madam Chairman, we cannot operate this Parliament like this. This is a completely new amendment. The debate is over. We have been ambushed. The Attorney General wound up a short while ago and he never told us that he has a redraft amendment. We are entitled to debate this. He closes the debate without telling the Senate that he has a new amendment. We cannot deal with this right now.

Sen. Jeremie, S.C.: Sen. Seetahal, S.C. had made the contribution. We took it on board but the amendment was drafted in very wide terms. I think Sen. King might have alluded to that. If you do not want to put it in front of you take no notice of it and I would use it as a reference point. If there is a difficulty I would speak to it.

Sen. King: Are we withdrawing new section 15E?

Sen. Jeremie, S.C.: Yes. I would hold my copy.

Madam Chairman: Are you withdrawing the new one?

Sen. Jeremie, S.C.: Yes.

Madam Chairman: I was ambushed at clause 1.

Sen. Ahmed: I had asked for a definition of "hearsay". Where will that be placed in the legislation? You can define it. It is defined in the Federal Laws of the United States, Article 8 that was referenced in the presentation by the Attorney General. What exactly is hearsay?

Sen. Jeremie, S.C.: "Hearsay" is a term of art. It is not defined anywhere. It is defined in the common law, the evidence law. I gave a definition during the course of my presentation and Sen. Seetahal, S.C. also gave a definition during the course of her contribution. During the course of my presentation I gave a definition which was taken from the case of Grant. Sen. Seetahal, S.C. gave a definition. I am not sure where she got hers from. It is a term of art. You can get it from cross on evidence. It is not something that will be defined.

Sen. Mark: Is the Attorney General saying that legislation dealing with evidence particularly the type we have here, the term "hearsay" should not be defined?

Sen. Jeremie, S.C.: It should not be. There is a rule against hearsay which derives from the law of evidence. It is a term of art in the law of evidence. It is not gossip. Sen. Seetahal, S.C. gave a very down-to-earth definition. I gave a technical definition from the case. Some things are defined by case law and some terms are not. For example, murder is defined at common law, the death of a man which occurs during a year and a day of the infliction of the wound. It is not defined in any law.

Sen. Dr. Gopeesingh: Do you have any definition before you to educate the Senate on what is meant by hearsay?

Madam Chairman: Something is wrong with the volume. People at the back are not hearing.

Clause 2.

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

Sen. Mark: Madam President, I beg to move that clause 2 be amended by the following:

(a) 2(a) in the proposed section 15B delete subsection (b) and insert new subsection (b). New subsection (b):

"is obtained by and under the hand of the Director of Public Prosecutions in any matter related to mutual legal cooperation pursuant to the Mutual Assistance In Criminal Matters Act, 1997."

(b) Delete the proposed section 15E.

Sen. Jeremie, S.C.: It is unworkable because the Mutual Legal Assistance Act does not recognize the Director of Public Prosecutions as the Central Authority. It is impossible.

Question, on amendment [Sen. W. Mark], put and negatived.

Sen. King: In new section 15B as it is here, I had suggested that before the word "evidence" in any criminal proceedings the word "hearsay" be included.

Sen. Jeremie, S.C.: It must be hearsay because once it is obtained through the mutual legal assistance process it would by definition be hearsay. It would not be part of our law. It would not be a document on Trinidad's proceedings. It must be hearsay.

Sen. Cropper: I would like to make two comments in relation to new section 15B then to propose a small amendment.

The first comment is that when we look at new sections 15C and 15D, we said before and several of us have drawn attention to this and rested our comfort level on the fact that these two new sections make provision for the discretion of the court in relation to the admissibility of documents.

The second comment is that in relation to new section 15B that provision is missing. It seems to me that it will require someone somewhere to have a determination of whether the documents that are proffered are the best or only evidence. That leads me to propose a small amendment that would read:

> "In any criminal proceedings, evidence of criminal conduct which may be contained in a document may be admissible in evidence if the court is satisfied that the document—"

Everything else remains intact.

Sen. Dr. Gopeesingh: Who determines the best or only evidence?

Sen. Jeremie, S.C.: It is the court and new sections 15B, 15C and 15D is subject to the common law principle with respect to the voir dire so that the evidence could be challenged.

Sen. Dr. Gopeesingh: Why not put it in B? If you put it in C it should be incorporated in B as well. You cannot use it in one area and not use it in the other area.

Sen. Mark: For consistency, I agree with Sen. Cropper.

Sen. Jeremie, S.C.: In B the Attorney General is only the agent. This is like a post box. I pass it to the court and the court has to determine whether or not the evidence is the best or only evidence of the conduct which is alleged by the prosecution. That is usually done on a voir dire.

Sen. Dr. Gopeesingh: That means it is going to the court after the individual has been charged.

Sen. Jeremie, S.C.: No.

Sen. Dr. Gopeesingh: That is the problem. What it goes to court to do? To determine whether the person should be charged?

Sen. Jeremie, S.C.: The DPP does the charging. I do not charge. I pass the documents.

Sen. Dr. Gopeesingh: This is not saying that, Attorney General.

Sen. Jeremie, S.C.: I do not charge. I cannot charge. That is not how it is done.

Sen. Cropper: Who lays the charge is irrelevant to the point that I am making. Firstly, we have allowed for the discretion of the court in 15C and 15D as to the admissibility of the documents.

Secondly, someone has to determine whether the documents under 15B are the best or the only evidence that is available. I am suggesting that we put in the phrase, "may be admissible in evidence if the court is satisfied that the document is the best or only evidence."

Sen. Jeremie, S.C.: When I say, "may be admissible in evidence if the document", that is referring to the court deciding whether or not it is admissible.

Sen. Montano: That is the point. It must not be misunderstood that the document may be admitted into evidence. It is a question of may be admissible; submitted by the prosecution. The mere fact that it meets this test and the prosecution submits that it is the best or only evidence and it has come from the Central Authority, then it is admissible. It does not mean it would be admitted. It is up to the jurisdiction of the court to decide whether to allow it to be admitted.

Madam Chairman: The words do not have to go. Senator, do you understand that?

Sen. Jeremie, S.C.: It does not have to go in.

Sen. Dr. Gopeesingh: What is the reluctance in including it?

Sen. Jeremie, S.C.: There is no reluctance in including it except that it is adding words where words are not necessary. I would be pushed to put them in.

Sen. Montano: If we put in the words it would give the discretion of the court prior to it being qualified to be admissible. Whether it is admitted is the issue. The admissibility is being determined by these two qualifications and should not be subject to any other fetter at this point.

Sen. Cropper: Thank you for the explanation. Can we apply the same reasoning to new section 15C? Can you apply the same principle of interpretation to new section 15C and explain how that would work?

Sen. Jeremie, S.C.: New section 15C relates to the prosecution. It has nothing to do with the AG. The charge has been laid and it is before the court. It says:

"Subject to subsection (2), a statement made by a person in a document shall be admissible…as evidence of any fact…"

Then, the conditions are stated. The person is deceased, unfit, outside, cannot be found, is kept away and so on.

Sen. Ahmed: Could I ask for some clarification as to why new section 15B(a) should not read, in the absence of the best evidence is the only evidence? This attributes to hearsay evidence but it becomes the best evidence.

Sen. Jeremie, S.C.: It is a term of art as well.

Sen. Ahmed: It cannot be.

Sen. Jeremie, S.C.: I am telling you. Do not argue with me. Argue with the—I am not sure what is being asked of me.

Madam Chairman: You have an amendment to clause 2. Are you still going with it? You have two sets of amendments. Are you going with any of them?

Sen. Jeremie, S.C.: Madam Chairman, I beg to move that clause 2 be amended by inserting after the proposed section 15C(1) the following new subsection:

(2) Leave may be given by the court under subsection (1)(e) only if the court considers that the statement ought to be admitted in the interest of justice having regard to:

(a) the statement contents;

(b) any risk that its admission or exclusion will result in unfairness to any party to the proceedings;

—and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence—

(c) any other relevant circumstances; and

(d) renumber subsections (2) and (3) as subsections (3) and (4) respectively.

The general test would apply; the probative value test would apply to (a) to (d).

Madam Chairman: E has the problem.

Sen. Jeremie, S.C.: Yes. We have to include a special test of capture, to protect the interest of the accused persons.

Madam Chairman: Senators, do you understand that? All right.

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.

ADJOURNMENT

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, I beg to move that the Senate be now adjourned to Tuesday, February 13, 2007 at 1.30 p.m. at which time we would deal with the Heritage and Stabilisation Fund (No. 2) Bill.

Sen. Mark: When was that laid?

Sen. The Hon. Dr. L. Saith: I am reading from what would be on your Order Paper next Tuesday. [*Interruption*] Yes it was.

Sen. Mark: When did it qualify?

Clerk of the Senate gives explanation. [*Inaudible*]

Madam President: Continue Minister.

Sen. The Hon. Dr. L. Saith: Madam President, while Sen. Mark recovers his wits, we will complete the Heritage and Stabilisation Fund (No. 2) Bill and then the Airports Authority (Amdt.) Bill.

Madam President: Hon. Senators, before we take the Adjournment, we have a matter on the adjournment. Sen. Mark, are you taking your matter? Is the Minister here to answer?

Sen. Mark: No.

Scholarships
(Process of Awarding)

Sen. Dr. Tim Gopeesingh: Madam President, the national community has been asking questions about the whole aspect of scholarships in Trinidad and Tobago. The national community is confused as to who gives scholarships; who

comprises the scholarship committee; what areas in Trinidad and Tobago scholarships are given; the advertising practices in the aspect of award of scholarships. I make this statement because a number of people were trying to determine what has happened to the question of scholarships that are given by foreign countries that had been occurring over a period of years. This seems to have gone out of the picture of the radar of scholarships in Trinidad and Tobago.

You will remember that Commonwealth scholarships were advertised. Students, both undergraduates and postgraduates are asking where these scholarships are advertised and how they are given. What has happened to the scholarships that were advertised by foreign countries? Who comprises the scholarship committee and what are their qualifications? This country is unaware of who comprises the scholarship committee and in what areas they are giving scholarships.

We have the national scholarships that are won based on the Advanced Level Examinations and probably CAPE. I believe that about 200 national and additional scholarships are given in that respect.

9.30 p.m.

We are quite comfortable with the administration of that aspect of it. There are a number of institutions in Trinidad and Tobago which are operating privately, and we are unsure which institutions have been given the privilege of having students who are given scholarships under the GATE programme. Under what basis are these private institutions deemed to have satisfied the requirements for the GATE programme so that students who are entering those institutions—basically, it is considered as a scholarship because it is under GATE.

We want to know about the private institutions that are taking in students for private education, not under the traditional university system of the University of the West Indies and international universities. In terms of the tertiary education, what is considered tertiary as opposed to secondary education? The country is confused and many people in the academic field are also confused so that when people go for advice they cannot determine how these scholarships are awarded.

The other area is the question of medical scholarships. We understand that scholarships are given now to medical students going to Jamaica and there are scholarships to medical students going to Grenada. And then there are those who are doing medicine at the University of the West Indies under the tertiary programme and they qualify under GATE not to pay any fees.

The information was sought from the Ministry of Public Administration and Information to determine how many students got scholarships to St. George's University since its inception. Our understanding is that information was not given by the Ministry of Public Administration and Information and that information had to be sought under the Freedom of Information Act. We want to know why this reluctance of the Ministry of Public Administration and Information not to give the information that was required.

I have with me a letter dated October 06, 2006 written by Mr. Devanan Maharaj, President GOPIO. He sought: Request under the Freedom of Information Act in respect of scholarship awards made by the Government of the Republic of Trinidad and Tobago for study at St. George's University, Grenada. The matter of caption refers, the information attached is submitted pursuant to your Freedom of Information Act.

It is in this context that people are asking about this question of the administration and the award of scholarships, yet the Ministry of Public Administration and Information is seemingly trying to conceal the whole award of scholarships that somebody had to go under the Freedom of Information Act and get the information.

Madam President, when we analyze the scholarship to St. George's Grenada, 76 scholarships have been given to students to go to the St. George's Medical School in Grenada, and there seems to be an analysis of the scholarships—mass inequity in the award of scholarships. I would like the hon. Minister to have a look at it if he does not have it, to inform himself as to what is really happening.

Madam President, we ask the Minister of Public Administration and Information. How many people have applied for these scholarships? On what bases were these scholarships awarded? Where were they advertised? What is the level of qualifications of these students who were awarded these scholarships? We feel this is absolutely necessary because it seems there are medical students going to three institutions around the Caribbean: St. George's, Grenada—We want to know if there are students going now to the University of the West Indies, Mona, Jamaica on scholarships from the Trinidad and Tobago Government. What is the criterion being used?

Madam President, I have been reliably informed that the admission requirements for the scholarships under the University of Grenada for the 76 scholarships is way below the national norm and standard, and it is designed for certain political purposes to award scholarships to people who the Government really wants to receive scholarships.

Whereas at the University of the West Indies students are admitted into medicine with not less than three A levels, we understand that students are admitted to the St. George's University on scholarships and when one asks what are the qualifications, all you get is A levels in Biology, Chemistry and Mathematics. Madam President, you know the difference. A levels could be an A, B, C D or E. You can have students with three Es getting scholarships to go to the St. George's University in Grenada. We want the hon. Minister to tell this population who received the scholarships, what were the grades that these students got before they got the scholarships, how many students applied, what were the grades of the students who were not awarded the scholarships. And that is critically important for this population to understand.

My understanding of the award of scholarships for medicine as well, is that a criterion used is the preliminary ranking of the candidates conducted by St. George's University? It means that the students are there already and then St. George's University is being asked—hear what they are giving scholarships on as well! The potential of the candidates to contribute to the national development on completion of studies. Every one of the thousands of students will say that they will contribute to the national development on completion of studies. So what criterion is being used? Anybody who is being offered a scholarship—and do you know how much it is costing the Government? Nearly $9 million already it has cost the Trinidad and Tobago Government to send students to the St. George's University in Grenada.

Madam President, we have the University of the West Indies here. Of course, it is filled at the moment, but students who are receiving scholarships must meet the national criteria for scholarships.

Madam President, I was clinical dean of the medical school and I used to be on the admissions committee of the University of the West Indies. There was one year when there were 120 students with three A levels having 16 points and you could have taken only 40. We want to know, of those students who have been left behind, not being able to get a place at the University of the West Indies, what has happened to them, and have scholarships been given to students with three Es? We believe that this is taking place. It is grossly unfair and it is shrouded in secrecy, it is shrouded in some partisanship and we are very unclear about what is happening.

Why is this Government and this administration hiding from the population and not wanting to tell this population what is happening to the scholarship scheme and preventing it from happening, and they have to go under the Freedom

of Information Act? What has happened to the international scholarships that were given by the country? Where are they being advertised now? I search the newspapers almost on a daily basis. Students ask me about it. Where do these students get information about these scholarships?

Madam President, we are very disturbed and many questions have come to us and we need some explanation by this Government in a very concrete manner. They must satisfy this population. If you cannot give the information by virtue of your 15 minutes, we would like to get a summary of all the scholarships that have been given since 2002—2006, international scholarships because if he does not provide it now, I will ask it under Questions for Oral Answer and if he does not give me we will go under the Freedom of Information Act. We want to know the qualifications of the students, where these scholarships have been advertised, who comprised the scholarships committee, what are the qualifications.

Madam President, these are the statements I make. Thank you very much.

The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith): Madam President, it pains me that someone as intelligent as Sen. Dr. Gopeesingh and who has held positions in this country could make a contribution like this. But I will give whatever information I have. Obviously, I cannot tell him all the people who got scholarships. I do not believe the Ministry has refused to give him information, but be that as it may.

Madam President, the Ministry of Public Administration and Information has the responsibility for the administration of scholarships and long term technical awards offered by or through the Government of Trinidad and Tobago. The Scholarships Division has as its core functions and responsibility, the following:

Processing the offer of training awards to nationals.

- Serving as a secretariat of the Scholarships Selection Committee and a Scholarship Review Committee.
- Implementing procedures to enable successful candidates to take up the awards. In other words, part of their job is that if somebody receives an award the Division is to help them to take it up.
- Servicing the awards.
- Monitoring the progress of trainees and ensuring that they make themselves available at the end of the award to fulfil their contractural obligations.

- Facilitating the placement of returned scholars and ensuring the recovery of money spent on the award where trainees have defaulted.

The Division is doing exactly what it was doing when Sen. Mark was Minister of Public Administration and Information.

Madam President, the annual programme of scholarships administered by the scholarships committee includes:

- The Commonwealth Scholarship and Fellowship Plan Award, UK, Canada and New Zealand.
- The Government of India, Hindi Awards Programme.
- Achievements of the Ato Boldon Awards.
- The Programme on Regional Planning Awards.
- Property Evaluation Estate Management Scholarships.
- The St. George's University, Doctor of Medicine Award.
- Production Sharing Awards in the Energy Sector.
- Programme of Development Scholarships approved by the Government and national scholarships as a result—[*Inaudible*]

How do we select? The selection process is as follows:

Scholarship and technical assistance awards advertised in the following media:

The daily newspapers, the *Trinidad and Tobago Gazette*, circular memorandum through the entire public service, Trinidad and Tobago Diplomatic Missions abroad, and the University of the West Indies, St. Augustine Campus.

I am surprised that someone as widely read as the Senator could not find it in any one of those three daily newspapers, or the university where he lectures.

Scholarship application forms can also be downloaded from the scholarships web page at the following internet address: httpp//www. scholarships.gov.tt. Scholarships managed by this Ministry are not awarded on the basis of individual requests, but are granted on a competitive basis after applications are received in response to the relevant advertisement of the award. We do not deal with individual requests. We deal with applications made in the context of advertisements.

Candidates who satisfy all requirements for the award may be required to attend an interview as part of the selection process. In other words, you satisfy the requirements of the award but generally, if there are more applicants than the awards available, they are subjected to an interview process.

Candidates are selected by the Scholarship Selection Committee appointed by the Cabinet. The committee comprises representatives from the public service, that is, the Ministry of Education, private sector organization and the University of the West Indies. It is under the chairmanship of the Permanent Secretary, Ministry of Public Administration and Information. I believe, at the moment there are two permanent secretaries, one from the Ministry of Education and one from the Ministry of Public Administration, two representatives of the University of the West Indies, and other persons. The Members all have experience in some aspects of the human resource development field. In cases where specialized knowledge of an area of study is required, the committee co-opts the services of experts in the field. Cabinet agrees to the award of scholarships on the recommendation of the Scholarship Selection Committee.

The Senator asked a question and I will give him the names of the people. There are no politicians. It is public servants, persons from UWI and persons from the private sector organizations. During my tenure, Madam President, never has a recommendation from the Scholarship Selection Committee been changed or modified by the Minister before he takes it to the Cabinet. I am sure Sen. Mark would be able to say the same thing under his tenure.

The following criteria are used by the selection committee: The academic qualifications of the candidates, the area of study chosen by the candidate in the context of the development needs of Trinidad and Tobago.

The relevance of the candidate's qualification in relation to the chosen area of study; the potential of the candidate to contribute to the national development on completion of studies; the potential of the candidate to complete their courses of study in the given time. The candidate's oral and communication skills, the candidate's suitability in terms of personal career and goals; and any special requirements stipulated by the donor agency or the sponsoring government.

Successful candidates are required to sign training agreements with the Government to return to Trinidad and Tobago on completion of their programme of studies and to serve the Government for a period as determined in accordance with the cost of the award. And that is now in accordance with the latest Cabinet decision dated November 01, 2000.

If their services are not required by the Government, they must seek employment in Trinidad and Tobago and remain employed for the period outlined in the contract.

Madam President, let me just talk about the two issues that were raised. The award for St. George's University are advertised in accordance with the procedure outlined, I am subject to correction because I am trying to talk from memory. It initially started with 25 scholarships, half subsidized by St. George's and half by the Government of Trinidad and Tobago. That still occurs but we have added another 25 scholarships fully subsidized. Basically the list of people is drawn from those who have been accepted by St. George's and listed in order of merit. We take that list and award on that basis.

I am afraid I did not go through what GOPIO does, put names to faces. I accepted what they have done and now that he says that, I am pretty sure that what he thinks is there is not there. [*Crosstalk*]

Madam President: [*Gavel pounded on table*] Please allow the Minister.

Sen. The Hon. Dr. L. Saith: In the case of Jamaica, since we have taken the decision to fund tuition of all students at UWI, including medical students, we fund through GATE all tuition in approved institutions and it is the job of the Ministry of Science, Technology and Tertiary Education to sign memorandum of understandings with accredited universities for that activity. Since Jamaica is part of the University of the West Indies, we decided that any Trinidadian who wanted to go to Jamaica as well, we will fund their tuition. We do it by means of advertising the scholarships. Applicants must meet the criteria for admission into Jamaica. I think this year we have done five. In each case they must meet the criteria for getting into the university.

Much of the information the Senator wants, I will be happy to provide if he submits it in a question form. Of course, as he says, even in asking questions, if it is available through other means, he can get it and I am sure Mr. Devanan Maharaj will get his information under the Freedom of Information Act. [*Crosstalk*] Because you passed the law to make it available to you.

Madam President, if the Senator or any other person has any questions relating to the application procedure, they can contact the Selections Section of the Ministry. The telephone numbers are: 868-625-MPAI, Extension 2020 or 2031; Fax No. 868-623-8636; email, scholarships@pi.gov.tt. From February 12, 2007,

there will be a website for the Scholarships Division of the Ministry where persons will able to go and not only get information but download application forms.

I am sure that Sen. Dr. Gopeesingh will not need to even ask some of the things he wants to ask. He can go straight on the website and get it. There is no reason to hide anything that is taking place, and we are not about, in matters of scholarships, not doing what is required. In fact, this Government is doing more to make tertiary education available to everybody in the country. [*Desk thumping*] Scholarships, free tuition, assistance through GATE, so that everybody regardless of race, colour or creed can access tertiary education and the Government remains committed to that.

The Government is going to raise the percentage of students receiving tertiary education from where it was then to where it should be. It was 12 under them, and it is now 33, and we are going to 60. That is the commitment of this Government and if we do that, every eligible student, every young person in this country who desires to receive tertiary education will get it. Thank you, Madam President.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 9.53 p.m.